IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-5353

RUFUS JUNIOR MINCEY,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

BRIEF FOR THE RESPONDENT

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SUMMARY OF ARGUMENTS

I.

(A) While, as a general rule, search warrants are required before conducting

a search, there are exceptions to this requirement. United States v. Edwards, 415 U.S. 800 (1974). In order for the exception to pass constitutional muster, it must meet a standard of reasonableness. And, in addition, the need of the public for the "Exception" must outweigh the Fourth Amendment interest of the individual.

The Arizona "Murder Scene Exception" meets both the tests of reasonableness and public need. Homicide is the ultimate of all crimes in a civilized society. Society is entitled to know at the earliest possible moment if, in fact, a homicide has taken place. Similarly, society has the right to see the responsible party held to answer for his act at the earliest possible moment. Arizona's "Murder Scene Exception" was created with this public interest in mind. In addition, the exception is founded on the principle of common sense. It seems only

logical that when police officers happen on a murder scene or location where a serious injury has occurred and foul play is suspected, they would be expected to take immediate steps to find out who was responsible for the deaths or serious injury. This necessarily includes an immediate and thorough investigation of the scene.

Arizona's "Exception" is not without safeguards. The Arizona Supreme Court has set out stringent guidelines which must be met before the rule applies. Secondly, a defendant has a prompt procedure for challenging any evidence which may have been seized during such a search.

Since the "Murder Scene Exception" only applies to a few limited situations, the evil of "general warrants" which was a basis for the Fourth Amendment is not present.

The Arizona "Rule" should not be considered a novel exception to the Fourth

Amendment. This Court has at least implicitly recognized the right of police officers to investigate the cry for help or the sound of a shot. McDonald v. United States, 335 U.S. 451 (1948). It is then only reasonable that they be allowed to conduct an investigation to determine why and who took the life of the person they find. In short, the Arizona "Exception" is needed for the protection of the public in order to ensure prompt resolution of incidents such as the one that occurred at Apartment 211. The exception is also based on a humanitarian demand that officers search the rest of the premises to see if there are any more injured.

(B) Even if this Court is unwilling to adopt the "Arizona Murder Scene Exception", the search of petitioner's apartment was still reasonable.

It is recognized that searches incident a lawful arrest are permissible without a

search warrant so long as the area of the search is within the immediate control or there is a danger evidence will be destroyed. Chimel v. California, 395 U.S. 752 (1969). The heroin found in the bedroom where petitioner was arrested was within his immediate control. The heroin in the bathroom was seized to prevent its destruction.

The search of petitioner's apartment after the shooting was reasonable and consistent within the dictates of common sense. During the midst of a lawful arrest a police officer was shot no less than 5 times. Approximately 8 minutes later a homicide detective -- Reyna -- arrived. He walked into a bullet riddled apartment. A critically injured officer was being taken to the hospital. Two more seriously injured people remained. There was blood in the hallway, on a chair, desk and rug. Some was still wet.

Reyna did what any other reasonable person would have done under the circumstances. He began an immediate investigation to find out what had happened and who was responsible. To have done otherwise, Reyna would have ignored the right of society to have the party responsible for the violent acts at apartment 211 brought to justice at the earliest possible moment.

II

The prosecutor properly cross-examined petitioner concerning two prior statements he wrote to a police officer during his recovery in the hospital. These statements were sufficiently inconsistent with his testimony on direct examination to warrant their use for impeachment under Harris v. New York, 401 U.S. 222 (1971) and Oregon v. Hass, 420 U.S. 714 (1975). Further, from the totality of the circumstances as reflected in the record before the Court,

it is plain that petitioner's prior inconsistent statements were neither coerced nor involuntary.

(A) Harris v. New York, supra, and Oregon v. Hass, supra, require no greater degree of inconsistency for impeachment with prior statements taken in violation of Miranda v. Arizona, 384 U.S. 436 (1966) than is required under traditional principles of evidence. Under those principles a witness' statement may be used to impeach his testimony if its implications tend in a different direction from the testimony or if its overall effect is to undermine the witness' sincerity by suggesting that at an earlier time he held a different belief from that which apparently actuates his testimony. 3A Wigmore on Evidence § 1040 (Chadbourne Ed. 1970); Commonwealth v. Pickles, 364 Mass. 395, 305 N.E.2d 107 (1973). Here petitioner testified at trial that

Officer Headricks had a gun when he entered petitioner's bedroom. To impeach this testimony the prosecutor established on cross-examination that petitioner earlier stated he was not sure "the guy" who came into the bedroom had a gun. Petitioner also testified he did not know Officer Headricks was a police officer or that he was being arrested. As impeachment, the prosecutor established on cross-examination that petitioner had earlier characterized the armed intrusion as a "bust". Both prior statements suggested petitioner had once had perceptions different from those to which he testified. The prior statements were hence sufficiently inconsistent to impeach his testimony under Harris v. New York, supra, and Oregon v. Hass, supra.

Further, the prosecutor was not required to give petitioner an advance opportunity to explain the prior inconsistent statements

as a precondition to cross-examining him about them.

(B) The totality of the circumstances utterly fail to demonstrate that petitioner's prior inconsistent statements were the product of an overborne will. Procunier v. Atchley, 400 U.S. 446 (1971). The lurid picture of coercive influences painted by petitioner is founded not upon substantial evidence in the record, but rather upon imaginative speculation from outward appearances. An analysis of the evidence shows that petitioner was not in fact subject to lowered resistance or special susceptibility to pressure by the officer who interviewed him. The evidence also demonstrates that the officer scrupulously refrained from employing physical or mental duress or abuse or any other coercive techniques. Finally, the evidence affirmatively shows that petitioner voluntarily cooperated with the officer's questioning

and attempted to aid him in his investigation. Petitioner's prior inconsistent statements were neither coerced nor involuntary.

For citations to portion of record not appearing in Appendix, the following abbreviations will be used:

Trial Transcript (T.T._____);
Grand Jury Transcript (G.J.T._____);
Hearing Transcript January 31, 1975 (H.T.J._____);
Hearing Transcript February 3 and 4, 1975 (H.T.F._____).

Respondent also has attached in the Appendix to this brief:

1. State's Exhibit 2 which is Detective Hust's reconstruction of petitioner's statement at the hospital;

2. Defendant s Exhibit D which is the handwritten answers of petitioner that were made in response to Hust's questions;

3. An excerpt on the definition and characteristics of Narcan from the Physician's Desk Reference, Medical Economics Company, 1974 Edition.

4. Violent Crime Statistics from the Federal Bureau of Investigation, Crime in the United States, 1974 (Uniform Crime Reports) (1975) and (1976).

5. Omnibus hearing forms numbers 20 and 16 from 17 Ariz.Rev.Stat.Ann. (1973) and 1975.

STATEMENT OF THE CASE

Arrest of Petitioner and Search of Petitioner's Apartment

The facts giving rise to the incident, which is the subject of this petition, arose out of an illicit drug transaction termed a "buy-bust".[1] During a raid following the drug transaction, Officer Barry Headricks of the Tucson Police Department,

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[1] A "buy-bust" occurs when the undercover agent or agents make contact with a person who allegedly has illegal drugs for sale and make an offer to buy. If the agent sees the drugs or has enough information to be sure that the person does have the drugs, then an arrest is made. The plan is for the agent to leave momentarily and then return with a number of agents to make the arrests. The usual plan is for the original undercover agent to get the door open by using his undercover identity. Then the rest of the agents rush in.

[H.T.J. at 141; H.T.F. at 4; T.T., May 27, 1975 at 186; see State v. Mincey, 115 Ariz. 472, 566 P.2d 273, 276, footnote 1 (1977).]

METRO[2] squad, was shot and killed by petitioner. (T.T., June 5, 1975 at 163, 166-167; T.T., May 27, 1975 at 76.) The sequence of events are as follows. At about 12:45 a.m. on October 28, 1974, Lieutenant Fuller, Commander of the METRO division, received a call from Officer Headricks requesting a meeting to discuss the case which is now the subject of this petition. The two met at Sambo's Restaurant. (T.T., May 27, 1975 at 182-84.)

After meeting with Headrick's, Fuller made arrangements for other members of the METRO division to meet at an off-base headquarters referred to as a "Pad".[3]

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[2] METRO is the letter designation for Metropolitan Area Narcotics Squad which investigates narcotics and dangerous drug crimes throughout Pima County. (App. at 23; T.T., May 27, 1975 at 29-30.)

[3] A "Pad" is a base of operations located separate and apart from the regular police station where undercover narcotics agents can meet without fear of being identified or recognized as police officers because they are seen at a police station. (T.T., May 27, 1975 at 40-41.)

(T.T., May 27, 1975 at 185.) At 2:00 p.m., other members of the METRO division met at the "Pad". At this time, it was determined that they would effectuate the arrest of the suspect by means of a "buy-bust", see footnote 1, supra. (T.T., May 27, 1975 at 186.) That is, Officer Headricks would initially go into the apartment and indicate a desire to purchase heroin. He would also indicate that a second party was waiting in the car with the money. If the suspect showed Headricks a substance represented to be heroin, Headricks would run a field test to determine whether or not the substance was in fact heroin. If the test was positive, Headricks would tell the suspect that he wanted the heroin, but first he would have to go to his car for the money. Headricks would return to the apartment with other narcotics agents who would wait

until Headricks had gained entry. Then, they would enter the apartment and assist him in arresting the suspect. (H.T.J. at 141, 149.) Headricks had a listening device placed on his person so that his fellow officers could hear what transpired during Headricks' initial entry into the apartment. (H.T.J. at 158-59; T.T., May 27, 1975 at 34-35.)

After the meeting, five vehicles, including that of Officer Headricks, met at the Colony Apartments. Each vehicle contained two officers with the exception of Fuller's car which, in addition to Detective Wolf, carried a deputy county attorney.[4] (T.T., May 27, 1975 at 186-88.)

The officers arrived at the Colony Apartments between 2:40-2:45 p.m. (T.T., May 27, 1975 at 41-42, 188.) The Colony

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[4] The county attorney was an observer only. He gave no advice as to the operation of the "buy-bust". (App. at 22; H.T.J. at 138.)

Apartments has more than one story.[5] The hallways of the apartment are enclosed. Officer Schwarz described the hall as "looking like a tunnel". (T.T., May 27, 1975 at 53.) The doors to the apartments are recessed back from the hall. Looking down the hall one observes "recesses" and not doors. (T.T., May 27, 1975 at 200.) The doors to the apartments do not face the hall but instead look directly toward another apartment door. In other words, the doors to Apartments 211 and 212 face each other in an alcove off the hallway. (T.T., June 9, 1975 at 554.) The door to Apartment 213 is in another alcove directly across the hall. (H.T.J. at 81.) The alcove is 4 to 6 feet wide. (T.T., May 28, 1975 at 107.) The hallways are described

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[5] This can be inferred from the testimony which indicates that the officers went up the steps to the second floor to reach petitioner's apartment, number 211. (T.T., May 27, 1975 at 53.)

as being 6 or 7 feet wide. (T.T., June 5, 1975 at 73.)

Officer Headricks was accompanied to the apartments by Officer Schwarz. Schwarz was designated Headricks' money man, that is, the person holding the money for Headricks. (T.T., May 27, 1975 at 36.) When Headricks and Schwarz arrived at the Colony, they parked in the parking lot on the west side of the apartments in the "furthest Northwest parking slot" in the lot. (T.T., May 27, 1975 at 188.) Their car was facing east toward the Colony Apartments. (H.T.F. at 6.) Headricks saw the informant and got out of the car. He walked away from the car in an easterly direction toward the apartments. It was then approximately 2:50-2:55 p.m. (T.T., May 27, 1975 at 51.) Schwarz was monitoring Headricks' activities. (T.T., May 27, 1975 at 48.) However, after a short time Schwarz was only able to hear static on

the radio monitor. This can occur when the transmitter is taken into a building. (T.T., May 27, 1975 at 48-49.)

Shortly after Headricks left the car, Schwarz observed an individual,[6] whom he had seen earlier with a female companion, jog along the north side of the apartments looking in all directions. Hodgman suddenly darted into a west alcove of the apartments. (H.T.F. at 6; T.T., May 27, 1975 at 50.) When Schwarz lost sight of Hodgman, he looked south and saw Headricks walking toward their car. (T.T., May 27, 1975 at 51-52.) When Headricks got to the car, he told Schwarz that he had seen the "dope" and that it

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[6] This person was identified as John Hodgman. (T.T. May 27, 1975 at 50.

looked good.[7] He went on to say that there was "a white guy and a black dude and a white chick in the apartment and that the white guy had a gun". (T.T., May 27, 1975 at 53.) Headricks said they were in apartment 211 (T.T., May 27, 1975 at 52) which was on the south side of the building.[8] It was later determined that

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[7] Fuller testified that he heard Headricks on the monitor discussing the Marquis field test (H.T.J. at 172) which he was performing in the apartment to determine whether the substance offered for sale was in fact heroin. Headricks had stated over the monitor that the test results were purple indicating they were dealing with "good dope". (H.T.J. at 161.)

[8] This can be inferred from the fact that Schwarz testified that he observed Fuller parking in the south parking lot as he and Headricks were entering the apartments immediately before the raid. (T.T., May 27, 1975 at 53.) Fuller testified that he had parked his car directly under the balcony of apartment 211. (T.T., May 27, 1975 at 195.)

apartment 211 was being rented by petitioner and Debra Mincey on October 28, 1974. (T.T., May 28, 1975 at 169.) The other units (T.T., May 27, 1975 at 194-95) with the exception of one, were monitoring Headricks' activities. (T.T., May 27, 1975 at 199.) Fuller then ordered the units to move toward the apartments. (T.T., May 27, 1975 at 194-95.) Schwarz and Headricks met Fuller, Sergeant Wolf and Deputy County Attorney Cochran at a stairway at the southwest corner of the apartment. (T.T., May 27, 1975 at 53.)

The five walked up to the second floor, entered the hallway and proceeded east (T.T., May 28, 1975 at 181-82) down the hall toward apartment 211. (T.T., May 27, 1975 at 196.) At about the same time, Officers Skuta, Anaya, Wright and Morgan started down the other end of the hallway going west toward 211. (T.T., May 27, 1975 at 143-44.) The hallway was about

one half a block long. (T.T., May 27, 1975 at 55.)

When they reached apartment 211, Headricks went to the door. Schwarz was behind Headricks and to his left. (H.T.J. at 165.) Fuller had his back to the wall looking around the corner at Schwarz and Headricks. (T.T., May 27, 1975 at 202.) Officer Wolf and Deputy County Attorney Cochran were behind Fuller and were "flattened" against the hall (T.T., May 27, 1975 at 201-02) with Cochran in the rear. (T.T., May 28, 1975 at 182.) The other officers were in the alcove of the apartment next to apartment 211. (T.T., May 27, 1975 at 144.)

Headricks knocked on the door. It was opened by Hodgman whom they had seen earlier. Headricks started in the door and said something with the word "police" in it. (T.T., May 27, 1975 at 56.) Headricks got half to three-fourths through

the door when Hodgman tried to slam the door. (T.T., May 27, 1975 at 57.) Headricks slipped into the apartment. (T.T., May 28, 1975 at 5.) Schwarz threw his arm between the door and the door jamb preventing the door from closing. (T.T., May 27, 1975 at 56-57.) Fuller hit Schwarz in the back and Anaya shoved Fuller. As the door started to open Schwarz yelled "police officers". (H.T.F. at 57; T.T., May 27, 1975 at 146.) Hodgman was knocked back into the wall. As Schwarz was wrestling with Hodgman, Fuller ran into the apartment. (T.T., May 27, 1975 at 57.)

When Fuller gained entry into the apartment, he saw a subject, later identified as Charles Ferguson standing across the living room in the hallway near the bedroom and bathroom doors. Fuller went to Ferguson and pushed him against the wall. Almost immediately Fuller heard the bedroom door, which was to his right, slam shut.

Next Fuller heard shots. The first shot fired sounded like a "pop".[9] (T.T. May 28, 1975 at 186.) Fuller moved along the outside bedroom toward the door with Ferguson in front of him. They were "nose to nose", only four inches apart. As they were nearing the door, a bullet came through the wall striking Ferguson in the head. More shots were fired. The bedroom door opened and Headricks came out and walked toward the living room and went down on the floor. (T.T., May 28, 1975 at 6-7.) Blood was gushing out of Headricks' mouth and nose.

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[9] Two different weapons were being fired. (T.T., May 28, 1975 at 16, 17, 186; T.T., June 4, 1975 at 41.) Some of the shots were described as soft (T.T., May 27, 1975 at 65), or like "pop-pop" (T.T., June 4, 1975 at 41) and the others were described as louder (T.T., May 28, 1975 at 188; T.T., May 27, 1975 at 65.) Officer Reyna test fired the two weapons that had been fired at the scene. Headricks' pistol sounded like a boom. Petitioner's .380 automatic (T.T., June 6, 1975 at 272) sounded like a sharp crack. (T.T., May 30, 1975 at 51.)

Schwarz began to administer first aid. He rolled Headricks over, ripped his shirt open and saw what appeared to be two bullet wounds in his back. (T.T., May 27, 1975 at 68-70.)

Fuller entered the bedroom and found in the closet a female shot in the hip and forearm.[10] (T.T., May 28, 1975 at 15.) Fuller then climbed up on the bed, went across it and found petitioner lying on his back behind the bed. Fuller spoke and prodded petitioner with his pistol but got no reaction. Directly under petitioner's hand was an automatic pistol. Detective Anaya came across the bed, picked up the pistol and placed it on the bed. (T.T., May 28, 1975 at 7-9.) The officers started to move petitioner until they saw blood under him. At that point, they left petitioner where he was. Fuller checked to see if "everyone was secure" and whether rescue

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[10] She was later identified as Debra Johnson. (T.T., June 3, 1975 at 28-29.)

and an ambulance had been called. Then, he instructed his men not to do any further investigation until they were relieved. This was consistent with departmental policy which prohibited the officers who are involved in a situation as described above from investigating their own actions. (App. at 7; T.T. May 28, 1975 at 16, 29.) The aforementioned forced entry occurred at about 3:20 p.m. (T.T., June 9, 1975 at 556) and the gun battle was over in a matter of seconds. (T.T., May 27, 1975 at 115-16.) Thirteen shots were fired. (G.J.T. at 63-64.) Fuller turned the scene over to Lieutenant Ronstadt, the on-duty force commander and Fuller's men did not take any further part in the investigation at Colony Apartments. (T.T., May 28, 1977 at 29.) Detective Reyna of the Tucson Police Department homicide detail arrived at the Colony Apartments at 3:28-3:30 p.m. (App. at 32; H.T.F. at 105-06.)

He had learned of the shooting over the radio and in response thereto went to the scene. (App. at 32; H.T.F. at 106.) Reyna was assigned "the scene investigation". (App. at 33; H.T.F. at 107.) Debra Johnson[11] and Charles Ferguson,[12] were still in the apartment when Reyna arrived. (H.T.F. at 123; App. at 35; T.T., May 29, 1975 at 23.) Reyna also relieved the officer who was guarding the petitioner. (T.T., May 29, 1975 at 22.)

Reyna began his investigation even before Hodgman and Greenwalt, who had been placed under arrest, were removed from the scene. (App. at 35; H.T.F. at 113.) Reyna had the apartment photographed and diagramed.

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[11] Johnson had a hip (T.T., May 29, 1975 at 23), and an arm wound. (T.T., May 29, 1975 at 25; T.T., June 3, 1975 at 28-29.) She appeared to be seriously injured. (H.T.F. at 125.)

[12] Ferguson had a head wound. (T.T., May 29, 1975 at 25.)

He had the evidence tagged indicating its location in the apartment. (App. 34-35; H.T.F. at 112-13.) Not only was Reyna looking for narcotics paraphernalia because the shootings were allegedly the result of a drug transaction (App. at 36; H.T.F. at 114), but he was also looking for anything that might assist in the reconstruction of the crime or for any instrumentality or products of the crime. (H.T.F. at 147.)

In addition to finding three wounded people at the apartment, there were other obvious signs to indicate that a violent struggle had just taken place. There was blood in the hallway. (H.T.F. at 115.) There were bullet holes in the hallway and bedroom walls. (H.T.F. at 116.) The window in the living room was shattered. (H.T.F. at 117.) Reyna observed shell casings and a live bullet in the bedroom. (H.T.F. at 116.) There were blood stains

on a chair, on a desk, on the wall outside the bedroom and on the rug. (H.T.F. at 118.) Some of the blood was still wet when Reyna made his initial entrance into the apartment. (T.T., May 29, 1975 at 79.) Headricks died at somewhere around 4:00 p.m. on October 24, 1974.[13]

Reyna's investigation of the murder scene can be broken down into at least four periods: (1) the first investigation began on October 28, 1974, with his arrival

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[13] Officer Schwarz arrived at the University Hospital somewhere around 3:45 p.m. (T.T., May 27, 1975 at 75.) He stayed at the hospital for twenty minutes. (T.T., May 27, 1975 at 76.) When Headricks died, Officer Hust told Officer Schwarz to notify the station. Hust notified Sergeant Bunting by radio of Headricks' death. (App. at 42; H.T.F. at 154.) At that point, petitioner's counsel stipulated that Headricks died at the University Hospital. (T.T., May 27, 1975 at 76.) From this, one can infer that Headricks was dead when Schwarz left the hospital.

at the apartment at 3:28 p.m. and lasted until the early hours of October 29, 1974 (App. at 37; H.T.F. at 141-42); (2) the second period began at about 9:00 a.m. on October 29, 1974 (H.T.F. at 145);[14] (3) the third period began in November, 1974, when Reyna went to the apartment at the request of apartment management to inventory petitioner's belongings that remained in the apartment. The items were placed in police property (H.T.F. at 145-46); and (4) the fourth began when the apartment was rented by the County Attorney's Office.[15]

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[14] Periods one and two lasted, at least, for three or four days. (H.T.F. at 141.) Reyna did testify that he had done work up until a month before the suppression hearing (App. at 37; H.T.F. at 140-41); that particular testimony of Reyna was given on February 3, 1975.

[15] The County Attorney's Office rented the apartment on April 3, 1975. (T.T. May 30, 1975 at 32.) On October 15, petitioner had informed the manager of the Colony Apartments that he would be moving out of his apartment, number 211 (T.T. May 28, 1975 at 169) at the end of October, 1974. (T.T. May 28, 1975 at 172, 173.)

During the first segment of the investigation measurements were taken, photographs were taken, and the spent cartridges and lead fragments were taken into custody with the exception of the one found in the glass fragments in the living room and the one dug out of the wall. (H.T.F. at 144-45.) The narcotics and narcotics paraphernalia were seized during the first segment. (H.T.F. at 150.)[16] If the items were not removed they were at least seized. (App.

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[16] A syringe was found in the bedroom. (App. at 81; T.T. May 29, 1975 at 129.) A military fatigue shirt or jacket was also found in the bedroom. One of the jacket pockets contained a wallet, inside of which was found identification belonging to petitioner. (App. at 78-79; T.T. May 29, 1975 at 71, 87-88.) In the same pocket 14 papers containing a white or grayish powder were found. (App. at 79; T.T. May 29, 1975 at 88.) [The white powder was later determined to be heroin. (T.T. June 3, 1975 at 160-62.)] The pocket also contained a hollow metal tube, a toilet roll holder, in which two papers of aluminum foil containing a powdery substance were found. [The powder was later determined to be heroin. (T.T. June 3, 1975 at 162-63.)] In the bathroom the officer found a long piece of surgical tubing, which had been cut in

at 40; H.T.F. at 148.)

In the second segment lead fragments were removed from the wall and another fragment was found in the debris on the balcony.[17] (App. at 39; H.T.F. at 144-45.)

The third segment involved the inventorying of the items remaining in the apartment that belonged to petitioner upon the request of the manager of Colony Apartments. The items were placed in police property. (H.T.F. at 146.)

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half, syringe caps, a metal spoon, and a plate holding a small bottle containing a white powdery substance. (T.T., May 29, 1975 at 128-30.) [The powder was later determined to be heroin. (T.T., June 3, 1975 at 153-55.)] A small bottle of cocaine was also found in the apartment. (H.T.F. at 119.) However, this was not the subject of any of the charges herein.

[17] Reyna testified there were officers on the scene 24 hours until ". . . we terminated the investigation". (App. at 38; H.T.F. at 143.) It would seem he is referring to the first two segments of his investigation.

The fourth segment was used to prepare the model used at trial for demonstrative purposes. The model was used to plot the projectory of the bullets. (T.T., May 30, 1975 at 28-30.) Headricks' shots went into the south wall. One of petitioner's shots went in a northeast direction. The remainder went in the north wall.

While the investigation was in progress back at the apartment, petitioner was taken to the University Hospital. (H.T.F. at 193.) Officer Hust arrived at the hospital after spending five minutes at the murder scene. (App. at 41; H.T.F. at 153.) Hust was asked to remove the handcuffs from the suspects who were brought from the scene. (App. at 42; H.T.F. at 155.)[18]

Approximately three or four hours later that evening, Detective Hust sought to interview petitioner. (App. 43-44;

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[18] The wounded were removed within two minutes of Reyna's arrival at the apartments. (T.T., May 29, 1975 at 26.)

H.T.F. at 155-58.) Before doing so Detective Hust obtained permission from a Dr. Farrel. Hust also testified that the nurses "checked with somebody to get it authorized". (App. 50; H.T.F. at 170.) Detective Hust found petitioner in the intensive care unit. At the time several doctors and nurses were in the area; and Elizabeth Graham, petitioner's nurse, was at his bedside. (App. 44; H.T.F. at 157.) Detective Hust observed that petitioner was being fed intravenously and had a tube down his throat, but did not recall whether his eyes were open or closed when he entered. (App. 44; H.T.F. at 158.)

Because of the tube in his throat petitioner was unable to speak to Detective Hust. (App. 45; H.T.F. at 160.) He therefore responded to Detective Hust's questions by writing or printing notes on hospital paper. (Defendant's Exhibit D, App. 55, H.T.F. at 179; App. 45-46; H.T.F. at 160-61.) Detective Hust did not record his interview with petitioner or take contemporaneous notes. (App. 45; H.T.F.

at 159.) On the morning following the interview, however, Detective Hust interlineated some brief notes on Defendant's Exhibit D with a blue pen concerning the questions he had asked and petitioner's responses. (App. 55; H.T.F. at 179.) Later the same day or immediately on the following day, Detective Hust wrote down his recollection of the complete questions he had asked. (App. 56; H.T.F. at 179.) These were later incorporated into Detective Hust's police report of November 4, 1974. (State's Exhibit 2, see Respondent's Brief Appendix, App. 51, 55; H.T.F. at 171-72, 179.)[19]

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[19] Instead of having Detective Hust attempt to refresh his memory as to each question he had asked, defense counsel and the prosecutor stipulated that as to the substance of each such question Detective Hust would testify as shown in State's Exhibit 2. (App. 57-58; H.T.F. at 182-83.) Under the stipulation the trial court was to consider only that part of State's Exhibit 2 in which the questions and answers appear. (Middle of page 2 through bottom of page 7.) (App. 58; H.T.F. at 183.) At page 58 of the Appendix (H.T.F. at 183), the prosecutor erroneously referred to State's Exhibit 2 as "State's D".

Detective Hust first asked petitioner for information about Chuck Ferguson, who had also been wounded at petitioner's apartment. (App. 46-47, 50; H.T.F. 162-63, 169.) He then told petitioner he was under arrest for the murder of a police officer, and advised him of his constitutional rights as follows:

> "Q. Will you read it now as you read it then for Mr. Mincey.
>
> "A. You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to the presence of an attorney to assist you prior to questioning if you so desire. If you cannot afford an attorney, you have the right to have an attorney appointed for you prior to questioning. Do you understand these rights -- his response was an affirmative head shake -- now having been advised of these rights, will you answer my questions? -- Again being another affirmative head shake."

(App. 50; H.T.F. at 169-170. See App. 48; H.T.F. at 165.)

Detective Hust's subsequent questioning of petitioner took place in three distinct segments interspersed by treatment and rest periods. (App. 59-60; H.T.F. at 186-87.) As reconstructed from State's Exhibit 2 and Defendant's Exhibit D, see Appendix, the interview was substantially as follows:

> "Q. Do you know a guy named CHUCK who was shot in the head? I advised him he was in serious condition.
>
> "Mincey: I knew him for two days.
>
> "Q. Do you know his name?
>
> "Mincey: Dude with the beard?
>
> "Q. Yes, I think so.
>
> "Mincey: CHUCK.
>
> "Q. Do you know his last name or where he lives?
>
> "Mincey: FAIR.
>
> "Q. He lives on FAIR?
>
> "Mincey: He has a ride at the fair in SOUTH TUCSON.

"Q. Who can we get hold of that knows him?

"Mincey: Everybody know everybody.

"HUST: I then proceeded to advise him of his constitutional rights, also advised him that he was under arrest and charged with killing a police officer. I then went on to question him. What do you remember that happened?

"Mincey: I remember somebody standing over me saying 'Move, nigger, move.' I was on the floor beside the bed.

"HUST: Do you remember shooting anyone or firing a gun?

"Mincey: This is all I can say without a lawyer.

"HUST: If you want a lawyer now, I cannot talk to you any longer, however, you don't have to answer any questions you don't want to. Do you still want to talk to me?

"Mincey: (Shook his head in an affirmative manner)

"HUST: What else can you remember?

"MINCEY: I'm gonna have to put my head together. There are so many things that I don't remember I like how did they get into the apartment?

"HUST: How did who get into the apartment?

"MINCEY: Police.

"HUST: Did you sell some narcotics to the guy that was shot?

"MINCEY: Do you me, (sic) did he give me some money?

"HUST: Yes.

"MINCEY: No.

"HUST: Did you give him a sample?

"MINCEY: What do you call a sample?

"HUST: A small amount of drug or narcotic to test?

"MINCEY: I can't say without a lawyer.

"HUST: Did anyone say police or narcs when they came into the apartment?

"MINCEY: Let me get myself together first. You see, I'm notfare (sic) sure everything happened so fast. I can't answer at this time because I don't think so, but I can't say for sure. Some questions aren't clear to me at the present time.

"HUST: Did you shoot anyone?

"MINCEY: I can't say, I have to see a lawyer.

"HUST: Okay, I explained before about an attorney and that you don't have to talk if you don't want to. You can also refuse to answer any individual questions. Are you still willing to talk to me without an attorney present?

"MINCEY: (head shake yes)

"HUST: Do you know what you are charged with?

"MINCEY: I am charged with murder, so the policeman says.

"HUST: Yes, that's right.

"MINCEY: Where is DEBRA?

"HUST: She is in She's in the (sic) hospital. She is shot, but she will be alright.(sic) Do you know which one the policeman was?

"MINCEY: I don't know who the policeman was. Which one was the narc?

"HUST: He was the one who took the sample or made a buy and then later came in the bedroom.

"MINCEY: Did he have one (sic) cowboy boots?

"HUST: Yes.

"MINCEY: There are a lot of things that aren't clear.

"HUST: We arrested two other guys.

"MINCEY: Two guys arrested?

"HUST: Yes.

"MINCEY: The one with the beard?

"HUST: Yea and JOHN.

"MINCEY: JOHN who else?

"HUST: DEBBIE and some 16 year old girl.

"MINCEY: When do we go to trial?

"HUST: It will be awhile, first you have to get out here (sic).

"MINCEY: You didn't see anyone else, anybody else?

"HUST: I wasn't there when this happened.

"MINCEY: No one saw anybody else?

"HUST: Where?

"MINCEY: In the apartment.

"HUST: I don't know, but I don't think so. Was there supposed to be someone else?

"MINCEY: We'll get it together.

"HUST: Who is 'we'?

"MINCEY: (points to both myself and him)

"HUST: Will you sign your name on this and write that it was

voluntary and that you didn't want an attorney present.

"MINCEY: Why?

"HUST: To show it was voluntary and you gave it and you didn't want an attorney present.

"MINCEY: It's void, I I (sic) don't sign.

"HUST: No, it's not void your nurse and I and MR. SHARP witnessed it.

"MINCEY: I hate to sign things in the bline. (sic) This information was given so that it might bring this case to an end.

"MINCEY then wrote out something and made me print my name next to it. The question wrote is, you asked me some questions, and I answered to the best of my ability at the present time. This is not to say I can't change my information at a later date because I'm not sure as of now. At that time I printed my name in the space he left blank on the side. MINCEY also wrote a note and this continued from the bottom of page two it will be (sic);

"MINCEY: This writing was used a means of talking because I could not talk at the time of the interview.

"HUST: Is there anything else you want to tell us?

"MINCEY: If it is possible to get a lawyer now, we can finish the talk.

"HUST: (He could direct me in the right direction whereas without a lawyer I might saw (sic) something thinking it means something else. I leave now and let you get some rest.

"MINCEY: Is it still inside me?

"HUST: I don't know.

"MINCEY: My right leg, I can't use it. I can't even move it the pain is unbearable.

"HUST: In a couple days, you'll feel better.

"MINCEY: I'll help you if I can or everyway possible.

"MINCEY also then wrote a note on the bottom my name is Sgt. and then crossed that out and then wrote AIC RUFUS J. MINCEY, 100 FMS DAVIS MONTHAN BLKS. 4202B24 3550 and then shop. Also wrote a note Would you please let someone know where I am. HUST: responded yes, don't worry we'll let them know and have them contact someone for you. This was the end of the first interview at 2015 hours, 28 OCTOBER 1974.

"Second interview with RUFUS MINCEY.

"HUST: RUFUS, I just talked with SGT. BUNTING and he said they had JOHN downtown and he was talking. Is there anything else you want to tell us about everyone leaving the apartment or following the guy that made the buy out of the apartment. Did JOHN and his girlfriend leave the apartment for a walk?

"MINCEY: Nobody knew JOHN and his old lady went for a walk to see where CHUCK went. They came back and said CHUCK was in the car with two guys. One of the guys came with CHUCK. He left and when he came back all hell broke loose.

"HUST: What do you mean 'all hell broke loose.'?

"MINCEY: When he came back a bust took place.

"HUST: A what took place? I can't read that word.

"MINCEY: BUST, bust.

"HUST: Do you know it was a bust?

"MINCEY: You see, I'm not sure. People were all over the house. I couldn't figure out whether it was a bust or rip off.

"HUST: Did you have a gun in the house, or do you own a gun?

"MINCEY: I have a gun in the house.

"HUST: What kind?

"MINCEY: 380.

"HUST: Where do you keep it in the house?

"MINCEY: No place in particular. I showed it to CHUCK and he showed me his.

"HUST: What kind of a gun did CHUCK have?

"MINCEY: Looked like a 38 SP.

"HUST: When this guy left the house, did he take any narcotics with him to his car?

"MINCEY: Take to the car with him?

"HUST: Yeah, did he leave with drugs or narcotics.

"MINCEY: He didn't take any drugs out of the apartment, that's for sure.

"HUST: Who did he leave the house with?

"MINCEY: When he left?

"HUST: Yes.

"MINCEY: By his self. (MINCEY signs the paper RUFUS J. MINCEY. Underneath he said 'I can sign this because I remember these things, not because JOHN is talking some bull shit.'

"This interview was terminated at 2230 hours on 10-28-74. Another interview at 2255 hours on 10-28-74.

"HUST: RUFUS, I have a few more questions. I don't think your (sic) telling us everything.

"MINCEY: That's why I have to have time to redo everthing (sic) that happened in my mind.

"HUST: Who answered the door with the gun?

"MINCEY: Nobody answered the door with gun.

"HUST: Did JOHN answer the door with a gun?

"MINCEY: JOHN didn't have a gun.

"HUST: Yes, he did. CHUCK gave him his gun.

"MINCEY: You see, that's something on me. I was in the bedroom. Let's rap tomorrow, face to face. I can't give facts.

"HUST: I think you can give facts.

"MINCEY: If something happens that I don't know about why would

CHUCK give JOHN his gun if he came with the guy?

"HUST: I don't know.

"MINCEY. Wrote questions I need to know.

"HUST: Go ahead.

"MINCEY: When I heard all the noise, I run out to check it out. Then I went back to the bedroom

"HUST: Where was CHUCK?

"MINCEY: Where was CHUCK?

"HUST: Yes.

"MINCEY: (MINCEY shrugged his shoulders in a manner of I don't know.)

"HUST: Did this guy that came into the bedroom have a gun?

"MINCEY: I can't say for sure. maybe the guy had a gun.

"HUST: I would rather you stop talking to me than lie to me. If your (sic) telling the truth your story will be the same as JOHN'S and the others.

"MINCEY: If I don't tell any lies I don't have to make things up to make the lie look like the truth. Let JOHN talk, all he can do is tell the truth or caught telling a lie. Same, same. I want a good lawyer, I'm charged

with murder, that's bad whether you did it or not. You don't have to prove you did something. You have to prove you didn't.

"HUST: You wrong about that, we have to prove you did do something.

"MINCEY: How many dudes came through that door?

"HUST: Dudes?

"MINCEY (Circled dudes)

"HUST: Do you mean cops?

"MINCEY: (Shook his head Yes in an affirmative manner)

"HUST: I heard ten. Get some rest, I'll talk to you tomorrow when you can get that tube out.

"MINCEY: What time will you come tomorrow.

"HUST: Sometime in the morning.

"MINCEY: I'll be waiting. I don't have to like. I want some legal guidance.

"HUST: I'll tell you what an attorney will say. He'll tell you to keep your mouth shut.

"MINCEY: I can't talk now. What good is this doing? Everybody (sic) I have said is the truth. There are a lot of things left out. After I get a lawyer, you'll come.

"HUST: Yeah, I'll come.

"MINCEY: I won't lie.

"HUST: Get some rest, I'll see you later.

"MINCEY: My leg hurt, I want to try to go to sleep.

"HUST: Okay.

"MINCEY: Tell DEBBIE that I miss her.

"HUST. Okay."

Detective Hust testified petitioner made responses that seemed for the most part appropriate to his questions. (App. 51; H.T.F. at 170-71.) Detective Hust made no threats or promises during the interview and exerted no physical or mental force or coercion. (App. 58-59; H.T.F. at 184-85.) Petitioner was conscious throughout the interview. (App. 58; H.T.F. at 184.) Further, except for mentioning a lawyer on numerous occasions, petitioner never told Detective Hust he did not wish to talk to him, and, in fact, asked him to return and talk to

him again. (App. 58; H.T.F. at 184, 191.)

Elizabeth Graham, petitioner's nurse, testified it was she who had admitted petitioner to the intensive care unit. (App. 62-66; H.T.F. at 193, 203.) She testified he was awake at that time and never went to sleep as long as she took care of him that evening. (App. 66; H.T.F. at 204.) In her opinion petitioner was not in critical condition because his vital signs were stable and he was awake. (App. 64; H.T.F. at 198.) He had no head injuries. (App. 63; H.T.F. at 196.) Mrs. Graham stated the purpose of the intertrach tube that had been placed in his throat was to give him added oxygen as a precautionary measure. (App. at 64-65; H.T.F. at 198.) Petitioner was breathing normally and on his own. (App. 64; H.T.F. at 198-99.) Petitioner also had a nasal gastric tube to keep him from vomiting and an intravenous

needle in his arm. (App. 66-67; H.T.F. at 204-05.) Mrs. Graham stated that although petitioner was in a moderate amount of pain, he cooperated with everyone and was a "super" patient. (App. 66; H.T.F. at 203.) Although Dr. Martin Silverstein testified petitioner received Narcan,[20] a resuscitative drug, upon his arrival at the hospital (App. at 82-83; T.T., June 3, 1975 at 26-27), there was no evidence of what its effects were or how long they lasted. None of the drugs

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[20] This Court may take judicial notice of the definition and effects of Narcan as defined in the Physician's Desk Reference, Medical Economics Company, 1974 Edition. Federal Rules of Evidence, Rule 201(b), (d), (f). Thornton v. United States, 271 U.S. 414, 46 S.Ct. 585, 70 L.Ed. 1013 (Ga. 1926).

Narcan (naloxone hydrochloride) is an essentially pure narcotic antagonist. It does not produce respiratory depression, psychotomimetic effects or pupillary constriction. In the presence of physical dependence on narcotics, Narcan will produce withdrawal symptoms. (For further information see Appendix.)

were considered mind altering over a long period.[21]

Mrs. Graham confirmed Detective Hust's testimony that he had obtained permission from her and from doctors and other members of the hospital staff to speak with petitioner. (App. at 63; H.T.F. at 195.) She also said the decision whether to allow someone to see a patient is up to the individual nurse. (App. 65; H.T.F. at 202.) Mrs. Graham stayed with petitioner while Detective Hust asked him questions. (App. 63; H.T.F. at 195.) Although at one point she told petitioner on her own initiative that it might help to cooperate, she did not herself ask any questions. (App. 62; 65-66; H.T.F. at 194, 202-03.) She stated that petitioner

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[21] Dr. Silverstein was the treating physician on admission (T.T., June 3, 1975 at 22, 24, 25.)

> "Q. Were any of those drugs [given petitioner] what you consider mind altering drugs?
>
> "A. Over a long period, no."
>
> (T.T., June 3, 1975 at 51.)

appeared to be alert and to understand Detective Hust's questions. She also testified that no one physically or mentally abused petitioner or threatened him, or did anything else to force him to answer questions. (App. 63; H.T.F. at 196.)

Petitioner did not testify at the voluntariness hearing. At trial he testified on direct examination that just before the shooting he heard a crash from the living room, opened the bedroom door, and saw an individual running toward the bedroom with a gun in his hand. (T.T., June 5, 1975 at 162.) On cross-examination the prosecutor asked him if he recalled telling Detective Hust that he was not sure if the guy who came into the bedroom had a gun. (App. 86; T.T., June 6, 1975 at 235-36.) Petitioner stated he did not know. He also testified he had not been sure who Hust was talking about or what time he was

talking about. (App. 86-87; T.T. June 6, 1975 at 235-37.) The prosecutor then questioned petitioner as follows:

> "Do you recall being asked these specific questions by Detective Hust?
>
> "'Detective Hust: Go ahead.
>
> "'A. When I heard all the noise I ran out to check it out. Then I went back to the bedroom.
>
> "'Q. By Detective Hust - 'Where was Chuck?
>
> "'A. (By Mr. Mincey) Where was Chuck?
>
> "'Q' - by Detective Hust - 'yes.
>
> "'A (By Mr. Mincey) (Mincey shrugged his shoulders in a manner indicating he didn't know).
>
> "'Q - By Detective Hust - 'Did this guy that came into the bedroom have a gun?
>
> "'A. I can't say for sure. Maybe the guy had a gun."
>
> (App. 87; T.T., June 6, 1975 at 237-38.)

Petitioner again stated he did not know what

"guy" Detective Hust had been referring to. (App. 88; T.T., June 6, 1975 at 238.)

Petitioner further testified that at the time Officer Headricks was coming across the room at him it never entered his mind that he was being arrested. (App. 88-89; T.T. June 6, 1975 at 239-40, 252-53.)

> "Q Do you recall him asking you these questions, giving these answers:
>
> "'Q' From Detective Hust -- 'What do you mean, "all hell broke loose"?'
>
> "'Mincey: When he come back, a bust took place.
>
> "'Q A what took place? I can't read that word?
>
> "'A Bust. Bust.'"
>
> (App. 8, 9; T.T., June 6, 1975 at 253.)

Petitioner explained, "He had already told me that a policeman had been killed, so that's the only thing that could have happened." (App. at 90; T.T., June 6, 1975 at 254.)

In discussing his questioning by Detective Hust, petitioner testified he was trying to help as best he could (App. at 86; T.T., June 6, 1975 at 235, 302), and that he was trying to answer to the best of his recollection at the time. (App. at 86; T.T., June 6, 1975 at 235.)

At the conclusion of the voluntariness hearing, the trial court stated as follows:

> "As far as the voluntariness portion of it, it is my understanding that the State has no intention of using any statements made by the defendant, in their case in chief. The only thing that the Court has to determine in this matter is whether they should be used in the event Mr. Mincey takes the stand for impeachment purposes."
>
> (App. 68; H.T.F. at 208.)

At oral argument on petitioner's motion to suppress statements, counsel focused on Harris v. New York, 401 U.S. 222 (1971) and argued the voluntariness vel non of petitioner's written statements. (App. at 13-14; T.T., February 6, 1975 at 50-53.) The

trial court's ruling on the motion stated as follows:

> "IT IS ORDERED that Motion to Suppress statements is GRANTED as to same in the State's case in chief. IT IS ORDERED that Motion to Suppress statements for use for impeachment, if same is appropriate, is DENIED."
>
> (App. 74.)

Petitioner was charged in a five count indictment with first degree murder, assault with a deadly weapon, unlawful sale of narcotics, unlawful possession of narcotics for sale, and unlawful possession of a narcotic drug -- heroin. (App. 3-4.) He was found guilty of all the above-mentioned charges. The Arizona Supreme Court reversed the murder and assault with a deadly weapon convictions and affirmed the remaining three counts, State v. Mincey, supra.[22]

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[22] Respondent would point out that although petitioner was convicted in the trial court of all five counts, the Arizona

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Supreme Court affirmed only the narcotics convictions and reversed the murder and the assault with a deadly weapons conviction. As Mr. Justice Rehnquist stated in denying petitioner's motion to stay the retrial of the murder and assault counts, "[petitioner's] constitutional claims with respect to the admission of evidence at his trial can be reviewed here only insofar as they pertain to those convictions affirmed by the Supreme Court of Arizona and are therefore final judgments under 28 U.S.C.A. 1257 (as amended 1970)." ____ U.S. ____, 98 S. Ct. 23, 24 (1977). However, the Arizona Supreme Court did uphold the search of petitioner's apartment. This ruling would be binding on the trial court at retrial. In light of that, this Court could review all the convictions. Mills v. Alabama, 384 U.S. 214 (1966).

ARGUMENT I

THE "ARIZONA MURDER SCENE EXCEPTION" WHICH AUTHORIZES THE WARRANTLESS SEARCH OF A HOMICIDE SCENE OR LOCATION OF A SERIOUS PERSONAL INJURY WITH THE LIKELIHOOD OF DEATH AND SUSPECTED FOUL PLAY DOES NOT VIOLATE THE UNREASONABLE PROHIBITIONS OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

A. Arizona's Murder Scene Rule is a Valid Exception to the Fourth Amendment.

The Arizona "Murder Scene Exception" is reasonable with a rational basis and therefore does not violate the Fourth and Fourteenth Amendments to the United States Constitution.

The individual states are not precluded from adopting their own rules regulating search and seizure so long as their standards are reasonable. Ker v. California, 374 U.S. 23, 34 (1963). The "Arizona Murder Scene Exception" is a reasonable exception to the general rule requiring the obtaining of a warrant prior to conducting a

search. See Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971) (generally a search warrant is a prerequisite to a search).

This Court has recognized that there are exceptions to the rule requiring a search warrant prior to a search. United States v. Edwards, 415 U.S. 800, 802.[23] A balancing test is used to determine whether a search may be had without a

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[23] The following are situations where this Court has found that a search warrant is not a prerequisite for a valid search; objects found in plain view, Coolidge v. New Hampshire, supra; consent has been given, Schneckloth v. Bustamonte, 412 U.S. 218 (1973); search incident to a lawful arrest, United States v. Robinson, 414 U.S. 218 (1973); hot pursuit -- emergency situation, Warden v. Hayden, 387 U.S. 294 (1967); exigent circumstances as in the case of movables such as vehicles, Chambers v. Maroney, 399 U.S. 42 (1970); stop and frisk situations, Terry v. Ohio, 392 U.S. 1 (1968); abandoned property, Abel v. United States, 362 U.S. 217 (1960); border searches, United States v. Martinez-Fuerte, 96 S.Ct. 3074 (1976).

warrant. The Court will weigh the "public interest" against the "Fourth Amendment interest of the individual" in determining whether the warrantless intrusion will be upheld. United States v. Martinez-Fuerte, 96 S.Ct. 3074, 3081 (1976). The test is one of reasonableness,[24] Terry v. Ohio, 392 U.S. 1, 20-21 (1967), decided on a case by case basis. Ker v. California, supra.

An examination of Arizona's "Murder Scene Rule" set in the background of the facts sub judice will demonstrate that the Arizona "Exception" is reasonable and the individual interest of petitioner Mincey under the Fourth Amendment must give way to the overriding need of the public. Here, Tucson police officers were in the midst of conducting a lawful arrest when one of

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[24] The Fourth Amendment does not specifically ban searches without warrant but only prohibits unreasonable searches and seizures. Carroll v. United States, 267 U.S. 132, 146-47 (1925).

their number was shot no less than five times (T.T., May 28, 1975 at 116) by petitioner. (T.T., June 5, 1975 at 163, 166-67; T.T., May 27, 1975 at 76.) Two other individuals were seriously wounded, see footnotes 11 and 12, supra. When the shooting occurred the officers were already lawfully inside petitioner's apartment to arrest him for narcotics violations.[25]

Common sense and good police practice dictated an immediate investigation surrounding the circumstances that left one dead and two others seriously injured. This would necessarily include a detailed search of the premises.[26]

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[25] Petitioner had offered to sell Headricks heroin. Headricks ran a field test to determine whether the substance was, in fact, heroin. The test was positive. See footnote 7 supra. Thus, the officers had probable cause to enter the apartment and arrest petitioner. Ker v. California, 374 U.S. 23 (1963); see United States v. Johnson, 561 F.2d 832 (1977), cert. denied 97 S.Ct. 2953.

[26] This Court has long recognized that

The public also had an undeniable interest in the prompt apprehension of the party or parties responsible for the acts of violence that occurred in apartment 211. People v. Superior Court of County of Ventura, 41 Cal.App.3rd 639, 641, 116 Cal.Rptr. 24, 27 (1974).[27]

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a common sense approach will be taken when overseeing search and seizure issues. Hill v. California, 401 U.S. 797, 804-05 (1971).

[27] This Court may take judicial notice of the rise in the rate of violent crimes committed in Tucson, Arizona, as compared to the estimated rate of violent crimes committed nationwide. The Apollon, 9 Wheat. 362, 374 (1824); Carroll v. United States, 267 U.S. 132, 159-66 (1924); see footnote 20 supra.

In 1973, the rate of violent crimes committed per 100,000 inhabitants was 417.8 in Tucson and an estimated 414.3 nationwide. Federal Bureau of Investigation, Crimes in the United States 1973 (Uniform Crime Reports) 93, 1 (1974). By 1974, the rate of violent crimes committed per 100,000 inhabitants had risen to 571.6 in Tucson and to an estimated 458.8 nationwide. Federal Bureau of Investigation, Crime in the United States 1974 (Uniform Crime Reports) 89, 11 (1975). In 1975, the last report available, the rate had increased to 594.9 in Tucson and to an estimated 481.5 nationwide. Federal Bureau of Investigation, Crime in

This Court has recognized the practical considerations "of effective criminal investigation", Ker v. California, supra, 374 U.S. at 32, and has inferred that under certain "exceptional circumstances" the need for effective law enforcement will dispense with the need for the magistrate's warrant. Johnson v. United States, 333 U.S. 10, 14-15 (1948). Such was the case when Reyna arrived at the scene, it was his duty to begin immediately to ascertain the cause of and party responsible for the shootings at the Colony Apartments. People v. Superior Court of County of Ventura, 41 C.A.3rd 636, 641, 116 Cal.Rptr. 24, 27 (1974). Without the "Arizona Exception", Reyna would have lost valuable time during the initial stages of

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the United States 1975 (Uniform Crime Reports) 82, 11 (1976). A comparison of these figures shows that from 1973 to 1975 the rate of violent crimes committed in Tucson per 100,000 inhabitants has increased 42.3 percent while the estimated increase nationwide was only 16.2 percent, see Respondent's Brief, Appendix.

his investigation.[28]

In other cases immediate action is needed for the preservation of life. See McDonald v. United States, supra, 335 U.S. at 454. See also Wayne v. United States, 318 F.2d 205, 209 (D.C. Cir. 1963) (Berger, J., concurring, dictum.)

It is important to note that the evil which gave rise to the enactment of the Fourth Amendment is not present herein should this Court approve the Arizona "Murder Scene Exception". See United States v. Rabinowitz, 339 U.S. 56, 83 (1950) (Frankfurter dissenting). The Fourth Amendment was the product of colonial dissatisfaction with an abhorrence of writs of assistance and general warrants. Chimel v. California, 395 U.S. 752, 761 (1969);

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[28] See also Mascolo, The Emergency Doctrine Exception to the Warrant Requirement Under the Fourth Amendment, 22 Buffalo Law Review, 419, 428 (1973).

Boyd v. United States, 116 U.S. 616, 624-25 (1886). The case at bar does not involve the indiscriminate general searches but is limited solely to those isolated cases involving a death scene or the location of a serious personal injury with the likelihood of foul play. State v. Mincey, supra, 115 Ariz. at 482, 566 P.2d at 283. Thus, the exception at bar does not involve random searches conducted at the whim of an "officer in the field" like those struck down by this Court in Almeida-Sanchez v. United States, 413 U.S. 266 (1973).

Further, once the entry has been made -- lawful entry is required under the Arizona Supreme Court's guidelines, State v. Mincey, supra, 115 Ariz. at 482, 566 P.2d at 283, the individual's privacy has already been invaded. Chimel v. California, supra, 395 U.S. at 776, 782 (White, J., dissenting). Thus, any further intrusion is minor and is far outweighed by the public's interest in

having the wrongdoer found and brought to justice with all due haste. As once a defendant has been arrested, his reasonable expectation has been diminished:

> "While the legal arrest of a person should not destroy the privacy of his premises, it does -- for at least a reasonable time and to a reasonable extent -- take his own privacy out of the realm of protection from police interest in weapons, means of escape, and evidence."
>
> United States v. Edwards, 415 U.S. 800, 808-09 (1974).

Furthermore, under Rule 16, Arizona Rules of Criminal Procedure, 17 Ariz.Rev. Stat.Ann. (as amended 1975),[29] the Arizona defendant is given an opportunity prior to trial to promptly challenge[30]

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[29] See omnibus forms 20 and 16 in the Appendix. Form 16 was used in 1974, 17 Ariz.Rev.Stat.Ann. (1973) and form 20 is presently used. 17 Ariz.Rev.Stat.Ann. (1973).

[30] Under Rule 8.2, Arizona Rules of Criminal Procedure, 17 Ariz.Rev.Stat.Ann. (1975), a defendant in custody must be tried within 120 days of his initial

the admissibility of evidence obtained through a search and seizure.[31] Nor is

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appearance or 90 days from his arraignment whichever is the lesser. A defendant not in custody shall be tried within 120 days from his initial appearance or 90 days from his arraignment, whichever is greater. In 1974, defendants in custody had to be tried 90 days from the date of their initial appearance or 60 days from their arraignment, whichever was the lesser. The released defendant had to be tried within a 120 days of his initial appearance or 90 days from his arraignment, whichever was the lesser. Rule 8.2, 17 Ariz.Rev.Stat.Ann. (1973). Thus, the validity of the seizure of the evidence will be determined forthwith.

31 "In considering searches incident to arrest, it must be remembered that there will be immediate opportunity to challenge the probable cause for the search in an adversary proceeding. The suspect has been apprised of the search by his very presence at the scene, and having been arrested, he will soon be brought into contact with people who can explain his rights. As Mr. Justice Brennan noted in a dissenting opinion, joined by The Chief Justice and Justices Black and Douglas, in Abel v. United States, 362 U.S. 217, 249-250, 80 S.Ct. 683, 702, 4 L.Ed.2d 668 (1960), a search contemporaneous with a warrantless arrest is specially safeguarded since

the Arizona "Rule" susceptible to "hindsighting", United States v. Martinez-Fuerte, supra, 96 S.Ct. at 3068, because of the stringent guidelines set up by the Arizona Supreme Court restricting the application of the "Murder Scene Exception". In short, the Arizona "Rule" only applies: (1) to the scene of a homicide or location of a serious personal injury where there is a likelihood of foul play; (2) when the law enforcement officers were legally on the premises in the first

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'[s]uch an arrest may constitutionally be made only upon probable cause, the existence of which is subject to judicial examination, see Henry v. United States, 361 U.S. 98, 100, 80 S.Ct. 168, 169, 4 L.Ed.2d 134, and such an arrest demands the prompt bringing of the person arrested before a judicial officer, where the existence of probable cause is to be inquired into."

Chimel v. California, supra, 395 U.S. at 781 (White, J., dissenting.)

instance[32]; (3) when the search is limited to determining the circumstances of death; and (4) if the search began within a reasonable period following the time the officials learned of the murder or potential murder. State v. Mincey, supra, 115 Ariz. at 482, 556 P.2d at 283. In short, the Arizona exception is limited solely to a unique situation -- a murder scene.[33] When applying Arizona's "Rule" to the facts at hand, it is evident the circumstances at Apartment 211, Colony Apartments, fit within the "Murder Scene

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[32] Respondent would point out that the "lawfully present requirement" is similar to that of the "plain view" doctrine exception. Harris v. United States, 390 U.S. 234, 236 (1968).

[33] That the "Murder Scene Exception" is limited to a peculiar set of facts is substantiated by the lack of cases litigating the issue in Arizona. The following would appear to be the only Arizona cases, in addition to the case at bar, dealing with the "exception": State v. Sample, 107 Ariz. 407, 489 P.2d 44 (1971); State ex rel. Berger v. Superior Court, 110 Ariz. 281, 517 P.2d 1277 (1974); State v. Duke, 110 Ariz. 320, 518 P.2d 570 (1974). Sample v. Eyman, 469 F.2d 819 (9th Cir. 1972).

Exception". First, here one person was killed and two people were seriously injured during a gun battle at the apartment. Second, the METROofficers lawfully entered Apartment 211 to arrest petitioner for possessing and selling heroin. Third, the search was limited to ascertaining circumstances of the shooting. The drugs were material in establishing motive. Likewise, the search for the bullets and subsequent plotting and diagraming of the apartment were essential in reconstructing the event. Last, the search began immediately. The shooting occurred around 3:20 p.m. Reyna arrived around 3:28-3:30. He began his investigation immediately. See p. 14, supra.

With the above guidelines, it is easy for the trial court, or for that matter police officers in the field, to determine whether the "Arizona Murder Scene Exception" is applicable. Should the circumstance in issue not fit within the above framework,

neither "hindsighting", United States v. Martinez-Fuerte, supra, 96 S.Ct. at 3086, nor the location of hordes of contraband will save the search. See Sibron v. New York, 392 U.S. 40, 67 (1968) (fruits of search cannot justify original intrusion).

Even assuming the "Arizona Rule" is reasonable, the question arises why does Arizona need the "Murder Scene Exception"? First, respondent would ask this Court to take note of the rise in violent crime throughout the country. See footnote 27, supra. In order to combat this lawlessness, it is necessary for the interest of the individual to give way to the public interest of having fast and efficient criminal investigation tempered, of course, by the guidelines of State v. Mincey, supra. Without such an exception, the police will lose valuable time at the inception of the investigation. Immediacy is essential for resolutions of criminal conduct. Here, for example, Reyna

was at the scene when the blood was still wet. To hold otherwise will thwart prompt police investigation. The Arizona "Rule" is consistent with humanitarian motives as there may be other wounded and injured somewhere else in the premises other than at the initial point of entry. Therefore, officials should be allowed to search for them. See State v. Gosser, 50 N.J. 438, 236 A.2d 377 (1967). Such a rule is needed in order that individuals like petitioner may be brought to task for their deeds in the most expeditious manner possible so that the rest of society may live in an "ordered liberty".

The Arizona "Rule" is not a novel idea in constitutional law. This Court has implicitly recognized that a police officer may investigate without a warrant the sound of a shot or the cry for

help[34] and that the need for the detached magistrate may be dispensed with under exceptional circumstances. Johnson v. United States, supra, 333 U.S. at 14. See also Camara v. Municipal Court, 387 U.S. 523, 539 (1967) where this Court acknowledged that certain inspections without warrants would be proper in emergency situations. The issue then comes down to whether officers may conduct a warrantless search once they have lawfully entered the premises where a homicide has taken place or someone has been seriously injured with the likelihood of foul play.

Various states have upheld warrantless searches of the murder scene recognizing this type of search as being a reasonable exception to the general rule requiring

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[34] "This is not a case where the officers, passing by on the street hear a shot and a cry for help and demand entrance in the name of the law."

McDonald v. United States, 335 U.S. at 454, see United States v. Jeffers, 342 U.S. 48, 52 (1951).

warrants before a search can be conducted.

The California court, in People v. Wallace, 31 Cal.App.3rd 865, 107 Cal.Rptr. 659 (1973), in upholding the police technician's warrantless search of a kitchen drawer -- contents of drawer could not be seen without opening it -- 31 Cal.App.3rd 865, 868, 107 Cal.Rptr. 660 -- noted:

> "There is no more serious offense than unlawful homicide. The interest of society in securing a determination as to whether or not a human life has been taken, and if so by whom and by what method, is great indeed and may in appropriate circumstances rise above the interest of an individual in being protected from governmental intrusion upon his privacy. In our view this is such a case. We see here no more than the 'legitimate and restrained investigative conduct undertaken on the basis of ample factual justification' which is not proscribed by the Fourth Amendment. Terry v. State of Ohio, supra (1968) [392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889]. The public had a right to expect and demand that the police would conduct a prompt and diligent investigation of these premises to ascertain the

> cause of this apparently violent death and to solve any crime committed in the course thereof."
>
> Citing State v. Chapman, 250 A.2d at 210-211. People v. Wallace, 31 Cal.App.3rd at 869, 107 Cal.Rptr. at 661.

The Court went on to say that both common sense and good investigative procedures dictated that the police retain possession of the premises to ascertain the cause of the death. 31 Cal.App.3rd at 872, 107 Cal. Rptr. at 662. This same common sense approach recognizing that the interest of society justified the intrusion on the individual interest under the Fourth Amendment was followed by another California case in People v. Superior Court of County of Ventura, 41 Cal.App.3d 523, 116 Cal.Rtpr, 24 (1974).

The same rationale is present in other cases. In State v. Chapman, 1968-69 Me. 203, 250 A.2d 203 (1969), the

Supreme Court of Maine, in answering the defendant's contention that the failure of the police to obtain a search warrant while processing a murder scene,[35] held:

> "We are satisfied that if the police cannot, after lawful entry, make the sort of prompt, orderly and methodical investigation of the scene of a violent death that is here shown, the protection of the legitimate interests of society will be seriously weakened."
>
> 1968-69 Me. at 212, 250 A.2d at 212. (Emphasis added.)

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[35] See State v. Chapman, 1968-69 Me. at 205, 250 A.2d at 205 where the court framed the issues to be decided in Chapman's appeal.

> "The following issues are framed for decision here:
>
> '1. Whether or not the items taken by law enforcement officials were abondoned property at law and, therefore, not under the protection of the Fourth Amendment to the United States Constitution.
>
> 2. Whether or not the search and seizure was unreasonable under the Fourth Amendment to the United States Constitution on the particular facts of this case.

There, the officers, in response to a radio call, arrived at the defendant's home finding the victim dead and covered with blood. The defendant was placed in custody and taken from the scene even though no formal charges were filed. The investigation continued. Prior to the removal of the defendant, he gave permission for the officer to look around. However, the whiskey bottle -- the object sought to be suppressed -- was not found until several hours after the defendant left his home. The bottle was found in a trash can in the basement garage after more than a

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> "(a) Whether failure of law enforcement officials to obtain a search warrant while processing a murder scene is violative of the Fourth Amendment of the United States Constitution?
>
> "(b) Whether the law enforcement officials could have satisfied requirements of the specificity clause of the Fourth Amendment to the United States Constitution had they tried to obtain a search warrant?"

cursory examination of the premises.[36] The Court concluded that the officers had a duty and obligation to make a thorough investigation to "determine whether the decedent was the victim of foul play and if so by whom and by what means". State v. Chapman, supra, 1968-69 Me. at 210, 250 A.2d at 210. The Court went on to hold:

> ". . . if the police cannot after lawful entry, make the sort of prompt orderly and methodical investigation of the scene of a violent death that is shown, the protection of the legitimate interest of society will be seriously weakened."
>
> 1968-69 Me. at 212, 250 A.2d at 212.

This duty of the police to conduct a thorough investigation and search of the scene of a violent death without a search warrant was also recognized by the Court in State v. Brown, 475 S.W.2d 938, 949

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[36] The Court rejected the state's argument of abandonment, State v. Chapman, supra, 1968-69 Me. at 212, 250 A.2d at 212.

(Texas Ct.Cr.App. 1972). Again the search could not be classified as cursory. Here, on one occasion the officers had returned to the scene, finding the house locked, they crawled through a window and during the search of the home found a shirt belonging to the defendant with blood spots in a clothes hamper.

The same rationale -- police have the duty and authority to investigate death scenes -- is present in other cases even though the courts held that under the circumstances the admission of the evidence was harmless beyond a reasonable doubt. State v. Oakes, 129 Vt. 241, 276 A.2d 18, 24-25 (1971) and Lonquest v. State, 495 P.2d 575 (S.Ct. Wyoming 1972).

Other courts have approved the warrantless searches of death scenes, relying on the plain view doctrine. Stevens v. State, 443 P.2d 600 (S.Ct. Alaska 1968); State v. Gosser, 50 N.J. 438, 236 A.2d 377 (1967);

Patrick v. Delaware, 1967 Del. 268, 227 A.2d 486 (1967).

In Davis v. Maryland, 236 Md. 389, 397-98, 204 A.2d 76, 81-82 (1964), the Court upheld the search of the death scene on the plain view doctrine and search incident to arrest of the defendant.

In conclusion, the interest of society to see that those responsible for the taking of Officer Headricks' and the near taking of Charles Ferguson's and Debra Johnson's lives far outweighs the individual interest of petitioner Mincey under the Fourth Amendment.

B. Under the Totality of the Circumstances the Warrantless Search of Petitioner's Apartment was Reasonable.

Should this Court decide not to adopt the "Arizona Murder Scene Exception", the petitioner's conviction need not be reversed because the search of petitioner's apartment was reasonable under the circumstances. While

as a general rule, it is necessary to obtain a search warrant before making a search, Coolidge v. New Hampshire, supra, there are exceptions to this rule. One of these exceptions are searches made incident to a lawful arrest when the items seized are within the immediate control of the defendant. Chimel v. California, supra, 395 U.S. at 763.

Here petitioner had offered to sell Headricks heroin. Headricks had performed a Marquis field test to determine whether the substance was heroin. The test was positive. Therefore, Headricks had probable cause to arrest petitioner, see footnote 7 supra.

Petitioner was arrested in the bedroom. The shirt with petitioner's identification containing the papers of heroin and toilet tube with heroin was found in the bedroom on a chair, see footnote 16 supra. Certainly, the shirt containing the heroin was within

petitioner's "immediate control" and therefore subject to being seized pursuant to the lawful arrest of petitioner. See Hill v. California, 401 U.S. 797 (1971).

This leaves the heroin and other paraphernalia found in the bathroom, see footnote 16, supra. The heroin was sitting in a jar on a plate. (T.T., May 29, 1975 at 130.) One of the reasons for allowing a search incident to a lawful arrest is to prevent the destruction of evidence. Chimel v. California, supra, 395 U.S. at 763. Headricks had told the other officers via the monitor that the heroin was in the bathroom. (H.T.J. 162.) It goes without saying that heroin can be easily disposed of by flushing it down the commode.

When Fuller entered the apartment, Ferguson was in the hall between the bathroom and bedroom. (T.T., May 28, 1975 at 6.) It was, therefore, only reasonable to check the bathroom under the assumption that

Ferguson was going in the bathroom to destroy the evidence -- the heroin. This was not the routine search condemned in Chimel v. California, supra, 395 U.S. at 763, but one to prevent the destruction of evidence. Thus, all the heroin and drug paraphernalia was seized incident to petitioner's arrest and therefore properly admitted at his trial.

The investigation and search of petitioner's apartment after the shooting was reasonable; and as a result, the trial court properly denied petitioner's motion to suppress.[37] After the officers lawfully entered petitioner's apartment, one of their number was shot at least five times. (T.T., May 28, 1975 at 116.) He died a short time later.[38]

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[37]Only unreasonable searches are prohibited by the Fourth and Fourteenth Amendments, Carroll v. United States, supra.

[38]See footnote 13, supra.

Common sense and good police practice dictated but one course of conduct -- begin an immediate investigation to determine who was responsible and the circumstances surrounding the shootings. People v. Wallace, supra. In short, the exigencies of the circumstances required an immediate and thorough investigation of the shootings that left one dead and two seriously injured. Patrick v. State, supra, 1967 Del. 486, 227 A.2d at 486.

The logic of Reyna's actions becomes evident after examining the scene that greeted Reyna at Apartment 211 upon his arrival. There was blood in the hallway. The bedroom and hall walls had bullet holes. The living room window was shattered. Shell casings and a live bullet were in the bedroom. There were blood stains on a chair, desk and rug. Some of the blood was still wet.

(T.T., May 29, 1975 at 79).[39] Besides petitioner, there were two other people in the apartment suffering from bullet wounds. Headricks died around 4:00 p.m., see footnote 13 supra. Reyna did what any reasonable person would do under the same circumstances -- find out what happened and who was the responsible party.

It might be argued that Reyna should have obtained a search warrant when he returned the next day. However, so long as the initial search was justified, the fact that it continued past the first day should not vitiate the search conducted the following days. See also, United States v. Edwards, supra, 415 U.S. at 805, where this Court held that the search of defendant's clothes ten hours after his arrest was not invalid because of the wait since the officer could have made the search

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[39] Of course, items in the open would seem to be admissible under the plain view doctrine, Coolidge v. New Hampshire, supra.

initially. The test in Edwards was not whether it was reasonable to get a search warrant but whether the search itself was reasonable. 415 U.S. at 807. Thus, Reyna's search the following days should not be invalidated because the search was reasonable at its inception. Also, it would seem unreasonable to invalidate the search simply because Reyna could not finish his investigation -- search at one time.[40]

Finally, respondent submits that petitioner, by firing at least five shots into Headricks, could not expect his acts to go unnoticed. He certainly could and should have expected the authorities to investigate

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[40] The information obtained from petitioner's apartment after the county attorney rented the apartment on April 3, 1975, (see footnote 15, supra) was validly obtained because petitioner had given his landlord notice he was leaving as of October 31, 1974. (T.T., May 28, 1975 at 172-73.) Therefore, he had abandoned the apartment at the time the county attorney rented it and therefore the information was validly obtained. See Abel v. United States, 362 U.S. 217 (1960).

his actions even if they were justified. In other words, when petitioner emptied his pistol "at Headricks", he forfeited any reasonable expectation of privacy he might have had until the authorities ascertained the circumstances of the shooting. Or, in other words, shootings in crowded apartments do not go unheeded.

In conclusion, Reyna did only what common sense dictated. Under the circumstances, his search was reasonable. It was consistent with good police practice and was carried out for the needs of the populace which mandate that parties responsible for acts like those that occurred on October 28, 1974, be brought to the bar of justice at the earliest possible time.

ARGUMENT II

THE STATE PROSECUTOR PROPERLY CROSS-EXAMINED PETITIONER CONCERNING TWO PRIOR INCONSISTENT STATEMENTS HE HAD MADE TO A POLICE OFFICER DURING HIS RECOVERY IN THE HOSPITAL.

As indicated in the Statement of the Case, the prosecutor cross-examined petitioner at trial concerning two prior statements he had written for Detective Hust in the hospital. (App. at 84-90; T.T., June 6, 1975 at 231-39, 252-56.) Petitioner now contends this impeachment did not accord with Harris v. New York, 401 U.S. 222 (1971) and Oregon v. Hass, 420 U.S. 714 (1975) because his prior statements (1) were not inconsistent with his testimony bearing directly on the crime charged and (2) were involuntary and untrustworthy. He therefore concludes the state's use of his prior statements violated his rights under the Fifth, Sixth and Fourteenth Amendments to the United

States Constitution, and asks the Court to reverse the judgment of the Supreme Court of Arizona.

As set forth above, the state contends petitioner's prior statements were voluntary and trustworthy under traditional due process standards. The state further contends both statements about which petitioner was cross-examined were sufficiently inconsistent with his direct testimony at trial to warrant their use as an aid to the jury. The state's position is, therefore, that the use of such statements for impeachment was proper under Harris v. New York, supra, and Oregon v. Hass, supra.

Inconsistency of Petitioner's Prior Statements with his Testimony at Trial.

In Harris v. New York, 401 U.S. 222 (1971), the Court held the prosecutor properly impeached the petitioner's testimony with prior statements that "partially

contradicted" it, 401 U.S. 222, 223, even though the statements were concededly violative of Miranda v. Arizona, 384 U.S. 436 (1966). The Court stated:

> "The shield provided by Miranda cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances."
>
> (401 U.S. 222, 226.)

The Court's opinion noted that the prosecution "did no more than utilize the traditional truth-testing devices of the adversary process". The Court also stated:

> "The impeachment process here undoubtedly provided valuable aid to the jury in assessing petitioner's credibility . . . ."
>
> (401 U.S. 222, 225.)

The Court reaffirmed the holding of Harris v. New York, supra, in Oregon v. Hass, 401 U.S. 714 (1975), stating:

> "Here, too, the shield provided by Miranda is not to

> be perverted to a license to testify inconsistently, even perjuriously, free from the risk of confrontation with prior inconsistent utterances."
>
> (420 U.S. 714, 722.)

It would seem that Harris' reference to "traditional truth-testing devices of the adversary process" means the Court's rationale contemplated no greater degree of inconsistency than that required by the common law device of impeachment by prior inconsistent statements.[41] Of such

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[41] See, United States ex rel. Wright v. Lavallee, 471 F.2d 123 (2nd Cir. 1972), cert. denied 414 U.S. 867 (1973). In that case petitioner contended he had made certain statements after his request for a lawyer was denied. The Court of Appeals found it was not necessary to determine whether this was so from the state court record because the statements were used only to impeach petitioner's testimony under Harris v. New York, 401 U.S. 222 (1971). The Court rejected petitioner's protestation that the statements did not "directly contradict" his testimony, stating:

> "The conflict in crucial details between petitioner's trial version of the shooting and that given in his earlier statement was so extensive that the

impeachment, 3A Wigmore on Evidence (Chadbourne Ed. 1970) § 1040 says:

> "As a general principle, it is to be understood that the inconsistency is to be determined, not by individual words or phrases alone, but by the whole impression or effect of what has been said or done. On a comparison of the two utterances, are they in effect inconsistent? Do the two expressions appear to have been produced by inconsistent beliefs?"[42]
>
> (At 1048.) (Emphasis in original.)

> earlier inconsistent description 'undoubtedly provided valuable aid to the jury in assessing petitioner's credibility.' 401 U.S. at 225, 91 S.Ct. at 645."
>
> (471 F.2d 123, 127.)

But cf. United States v. Trejo, 501 F.2d 138 (9th Cir. 1974) apparently requiring a degree of inconsistency that would indicate an affirmative use of perjury by the witness.

[42] As an example, 3A Wigmore § 1040 gives the following:

> "C. Allen, J. in Foster v. Worthing, 146 Mass. 607, 608 16 N.E. 572, 574 (1888): It

Thus, a prior statement of a witness is admissible under traditional principles if

> is not necessary, in order to make the letter competent, that there should be a contradiction in plain terms. It is enough if the letter, taken as a whole, either by what it says or by what it omits to say, affords some presumption that the fact was different from his testimony; and in determining this question, much must be left to the discretion of the presiding judge."
>
> (At 1049.)

McCormick on Evidence (West 1972) § 34:

> "[W]hat degree of inconsistency between the testimony of the witness and his previous statement is required? The language of some cases seems overstrict in suggesting that a contradiction must be found, and under the more widely accepted view any material variance between the testimony and the previous statement will suffice. . . . Seemingly the test should be could the jury reasonably find that a witness who believed the truth of the facts testified to would have been unlikely to make a prior statement of this tenor? Thus, if the previous statement is ambiguous and according to one meaning would be inconsistent with the testimony, it

its overall effect is to undermine the witness' sincerity by suggesting that at an earlier time he held a different belief from that which now apparently actuates his testimony. See Commonwealth v. Pickles, 364 Mass. 395, 305 N.E.2d 107 (1973);[43] McCormick on Evidence (West 1972) § 34, supra, at note 3.

In the instant case, petitioner testified he was quite sure he had seen a gun in Officer Headricks' hand as Headricks entered the bedroom. (App. at 84; T.T., June 5, 1975 at 162-74.) On cross-examination the prosecutor brought out that

> should be admitted for the jury's consideration."
>
> (At 68.)

[43] In Pickles the Court stated:

> "[A] 'prior inconsistent statement' need not directly contradict the testimony of the witness. It is enough if its implications tend in a different direction."
>
> (364 Mass. 395, 402, 305 N.E.2d 107, 111.)

when Detective Hust asked him at the hospital whether "this guy" that came into the bedroom had a gun, petitioner had written, "I can't say for sure. Maybe the guy had a gun." (App. at 87; T.T., June 6, 1975 at 237-38.) Immediately thereafter, petitioner testified:

> "A. Well, I can't say for sure who he was talking about because he was asking about Chuck. So there's no telling who he was talking about.
>
> "Q. But he was talking about where Chuck was at the moment those officers entered the apartment, was he not?
>
> "A. Yes."
>
> (App. at 88; T.T., June 6, 1975 at 238.)

Petitioner's testimony and his prior statement were prima facie inconsistent, if not flatly contradictory, regardless of his attempted explanation.[44] (App. at 88-92;

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[44] 3A Wigmore on Evidence (Chadbourne Ed. 1970) § 1044 states:

> "[T]he impeached witness may always endeavor to explain

T.T., June 6, 1975 at 238-39, 252-56, 290-94.) It was therefore properly admitted to impeach his testimony under well-known evidentiary principles. 3A Wigmore on Evidence (Chadbourne Ed. 1970) § 1040, McCormick on Evidence § 34, and Commonwealth v. Pickles, supra.

> away the effect of the supposed inconsistency by relating whatever circumstances would naturally remove it. The contradictory statement indicates on its face that the witness has been of two minds on the subject, and therefore that there has been some defect of intelligence, honesty, or impartiality on his part; and it is conceivable that the inconsistency of the statements may turn out to be superficial only, or that the error may have been based not on dishonesty or poor memory but upon a temporary misunderstanding. To this end it is both logical and just that the explanatory circumstances, if any, should be received. . . ."
>
> (At 1062.)

Petitioner also testified that when the officers entered his apartment, he did not know Officer Headricks was a police officer and it never entered his mind that an arrest was taking place. (App. at 88-89; T.T. June 6, 1975 at 252-53; T.T. June 5, 1975 at 163, 204.) The prosecutor brought out, however, that when Detective Hust questioned him at the hospital shortly after the shooting, he described the melee as a "bust". (App. at 89; T.T., June 6, 1975 at 255.) Although arguably subject to mitigating explanation, the prior statement was prima facie inconsistent with petitioner's testimony because his spontaneous characterization of the armed intrusion as a "bust" could easily have sprung from a recollection of his contemporaneous perceptions of the shooting incident. Petitioner's testimony and his prior statement appeared to have been "produced by inconsistent beliefs" about the

character of the occurrence, 3A Wigmore on Evidence (Chadbourne Ed. 1970) § 1040, supra, and the prosecutor properly cross-examined him about the prior statement.[45]

Petitioner apparently cites this Court's decision in The Charles Morgan, 115 U.S. 69 (1884) for the proposition that the prosecutor improperly failed to give him an advance opportunity to clarify his statements before cross-examining him about them. To the extent he is arguing that giving the witness an opportunity to explain a prior statement is a precondition to cross-examining him about it, he is completely wrong. The Charles Morgan, supra, merely held in accordance with the familiar rule that the impeaching party must call the witness' attention to his prior inconsistent statement and allow

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[45] See, e.g., United States v. Barrett, 539 F.2d 244, 253-54 (1st Cir. 1976); United States v. Feldman, 136 F.2d 394, 399 (2nd Cir. 1943), aff'd. 322 U.S. 487 (1944).

him an opportunity to explain it before the party may prove the prior inconsistent statement by extrinsic evidence.[46] In this case no extrinsic evidence was offered to prove petitioner's prior inconsistent statements: he was only cross-examined about them. Moreover, both during the cross-examination and on redirect, petitioner had ample opportunity to explain them away. (App. at 88, 90, 92; T.T., June 6, 1975 at 252, 256, 293-94.)

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[46] The Charles Morgan, 115 U.S. 69, 78. Accord, Conrad v. Griffey, 16 How. 38, 46-47 (1853); United States v. Wright, 489 F.2d 1181, 1187 (D.C. Cir. 1973); United States v. Atkins, 487 F.2d 257, 259, n. 1 (8th Cir. 1973); Burton v. United States, 175 F.2d 960, 965 (5th Cir. 1949), cert. denied, 338 U.S. 909 (1950); 3A Wigmore on Evidence (Chadbourne Ed. 1970) §§ 1025-29. See Rule 613(b), Federal Rules of Evidence.

Petitioner's prior statements were sufficiently inconsistent with his testimony at trial to warrant their use under Harris v. New York, supra, and Oregon v. Hass, supra. In addition, the prosecutor followed the proper procedure for cross-examination on a prior inconsistent statement.

Voluntariness and Trustworthiness of Petitioner's Prior Statements.

Harris v. New York, 401 U.S. 222 (1971) held that statements of an accused taken in violation of Miranda v. Arizona, 384 U.S. 436 (1966), may nonetheless be used to impeach his testimony at trial "provided of course that the trustworthiness of the evidence satisfies legal standards". 401 U.S. 222, 224. In reaffirming and applying Harris, the Court stated in Oregon v. Hass, 420 U.S. 714 (1975):

> "There is no evidence or suggestion that Hass' statements to Officer Osterholme on the way to Moyina Heights were involuntary or coerced.

> He properly sensed, to be sure, that he was in 'trouble'; but the pressure on him was no greater than that on any person in like custody or under inquiry by any investigating officer."
>
> (420 U.S. 714, 722-23. (Emphasis added.)

Under Harris and Oregon, therefore, statements taken in violation of Miranda, supra, may be used to impeach the testimony of the accused if they are determined to have been voluntary and trustworthy.[47]

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[47] Petitioner asserts in passing (Petitioner's Brief at 25) that the trial court ran afoul of Jackson v. Denno, 378 U.S. 368 (1964) by failing to make a finding that his statements were voluntary. It is true that no express finding was made. (App. 74.) Under Sims v. Georgia, 385 U.S. 538 (1967), after remand, 389 U.S. 404 (1967), however, a "formal finding" is not necessary for compliance with Jackson. All that is required is that the trial court's conclusion that the statement is voluntary "appear from the record with unmistakable clarity". 385 U.S. 538, 544. In this case the trial court's conclusion concerning voluntariness is unmistakably clear from the record. At the voluntariness hearing, the prosecutor disavowed any intention to use any of petitioner's statements in his case-in-chief, and the trial judge stated the only thing she had to determine was whether they could be used to impeach petitioner's testimony.

Petitioner now contends the circumstances under which his statements were made failed to comply with those standards. His contention is unsupported by close scrutiny of the record and must fail.

The determination of whether petitioner's statement was voluntary, will be made after an examination of the "totality of the circumstances". See Procunier v. Atchley, 400 U.S. 446, 453 (1970) (the voluntariness

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(App. 68.) In that context the trial judge specifically referred to "voluntariness" as the "only question" before her. (H.T.F. at 208.) At oral arguments on petitioner's Motion to Suppress statements, counsel focused on Harris v. New York, supra, and argued the voluntariness question almost exclusively. (T.T., February 6, 1975 at 50-53.) The trial court's minute entry ordered the statements suppressed for use in the state's case-in-chief, but denied the motion as to use "for impeachment if appropriate". (App. 74.) From this context it is unmistakable that the trial court concluded the statements were voluntary. The Supreme Court of Arizona analyzed the Jackson issue in a similar fashion (App. 106-07) and petitioner has not to this point offered any refutation.

of a defendant's statements in pre-Miranda situation was "resolved in light of the totality of the circumstances"). In resolving issues of voluntariness, this Court can make its own examination of the record, Brooks v. Florida, 389 U.S. 413, 415 (1967), and independent determination, if warranted. Davis v. North Carolina, 384 U.S. 737, 742 (1966). Such a determination overruling the conclusion of the trial court is not warranted in the case at bar.

Petitioner's argument that Detective Hust overbore his will rests on a selective emphasis of factual circumstances that paint a lurid picture of coercion and insensitivity. It is particularly appropriate for the Court to engage in a close analysis of the record in this case; for petitioner's lurid picture fades to nothing when exposed to the light of day.

Petitioner asserts his fatigue made

him more susceptible to overbearing of his will, and cites Leyra v. Denno, 347 U.S. 556 (1954) and Ashcraft v. Tennessee, 322 U.S. 143 (1944), after remand, 327 U.S. 274 (1946). Leyra and Ashcraft, however, fail to support his contention. The petitioner in Leyra was questioned continuously by police for several days and nights. When he was at the point of physical and emotional exhaustion, he was closeted with a police psychiatrist who wheedled a confession out of him through psychiatric techniques and feigned sympathy and support. The petitioner in Ashcraft was subjected to the third degree continuously for thirty-six hours by teams of police and prosecutors operating in relays. In contrast, petitioner was questioned intermittently for approximately three hours at most. (App. 59-60; H.T.F. at 186-87; Defendant's Exhibit D; State's Exhibit 2.) He was awake at all times and appeared

alert to his attending nurse. (App. 63, 66; H.T.F. at 196, 204.) Detective Hust periodically ceased questioning him and told him to rest when he appeared to tire. (App. 59; H.T.F. at 186.) There was no evidence that he was comatose at the time of the questioning; indeed, the evidence clearly shows he was not. Moreover, there was no evidence of how long he had been without sleep, and hence the fact that he did not sleep during the evening of October 28, 1974, is of little significance.

Petitioner also asserts his will to resist was lowered by the fact that he was receiving sustenance intravenously. Davis v. North Carolina, 384 U.S. 737 (1966), cited by petitioner, is clearly inapposite. The petitioner there was arrested and held incommunicado for sixteen days until he confessed to rape and murder. During this time he was fed two thin, dry sandwiches

twice a day plus peanuts and cigarettes, and lost fifteen pounds. In the instant case there was no evidence of when Mr. Mincey last ate, and no evidence that he was affected in any way by lack of nourishment. The affects of his intravenous feeding can only be speculated upon, and cannot form the basis for a determination of voluntariness.

The only evidence that petitioner was in unbearable pain was his own self-serving statements in Exhibits Defendant's D and State's 2 and at trial. (App. at 91; T.T., June 6, 1975 at 291.) His nurse, Elizabeth Graham, who presumably had experience in gauging from objective appearances the degree of pain her patients were suffering, testified he was only in a moderate amount of pain. (App. at 66; H.T.F. at 203.) Moreover, the cases cited by petitioner go far beyond the facts of this case and do not support his position. In Reck v. Pate, 367 U.S. 433 (1961), the

mentally retarded petitioner was held incommunicado for four days, during which time he was ill and in pain and was questioned daily by groups of police officers for up to seven hours. The appellant in Ziang Sung Wan v. United States, 266 U.S. 1 (1924), was harassed and interrogated constantly for twelve days. He suffered from spastic colitis, which a doctor testified would cause constant pain and would have induced him to confess to end the torture. And in Beecher v. Alabama, 389 U.S. 35 (1967), after remand, 408 U.S. 234 (1972), the petitioner was captured after being shot in the leg. He was taken to a prison hospital, where his leg became so painful he required morphine every four hours. A medical assistant told him to cooperate with the police, and told the police to let him know if he did not tell them what they wanted to know. He signed written confessions after ninety minutes of interrogation.

Petitioner's situation was plainly not comparable to those in Reck, Ziang Sung Wan and Beecher, supra.

Petitioner also places great emphasis on the needles and tubes to which he was connected at the time of questioning. Although these post-operative accoutrements present an unpleasant picture, a picture is all it is, for there is no evidence whatsoever concerning the effect they may or may not have had on petitioner's decision to communicate with Detective Hust. In addition, Mrs. Graham testified that petitioner was awake and breathing normally, and that the oxygen he was receiving was a precautionary measure. (App. at 64-66; H.T.F. at 198-204.)

Petitioner also asserts the verbal abuse he received from a police officer shortly after the shooting lent an atmosphere of intimidation to the events that followed. Beecher v. Alabama, supra, and Clewis v. Texas, 386 U.S. 707 (1967), cited by petitioner

fall short of supporting his claim. In Beecher the petitioner was downed in a chase by police with a bullet in his leg. While he was down, the police held guns to his head and demanded that he confess to rape and murder. When he denied he had done so, one police officer said he was going to kill him and fired a rifle next to his ear. Petitioner then confessed. After being threatened by a mob in jail, petitioner later signed written confessions while in excruciating pain at a prison hospital. In contrast, the alleged abuse herein was "move nigger move" (App. at 47; H.T.F. at 163) and must have occurred for all practical purposes during or at the end of the "heat of battle". (App. at 92; T.T., May 28, 1975 at 7-9.) This can hardly be considered as a contributing factor to petitioner's statement, particularly after considering the lapse of time -- three to four hours minimum (App. at 43-44; H.T.F. at 156-57) --

between petitioner's arrest at the apartment and the interview in question. During this period, petitioner received emergency room treatment for his injury. (T.T., June 3, 1975 at 24-27.) This necessarily broke any coercive atmosphere of the "battle scene". In addition, a reading of State's Exhibit 2 (Respondent's Brief Appendix, pp. 2-7) of the interview -- demonstrates a willingness on the part of the petitioner to continue with the interview:

"HUST: Do you remember shooting anyone or firing a gun?

"MINCEY: This is all I can say without a lawyer.

"HUST: If you want a lawyer now, I cannot talk to you any longer, however, you don't have to answer any questions you don't want to. Do you still want to talk to me?

"MINCEY: (Shook his head in an affirmative manner.)

* * * *

"HUST: Did you give him a sample?

"MINCEY: What do you call a sample?

"HUST: A small amount of drug or narcotic to test?

"MINCEY: I can't say without a lawyer.

"HUST: Did anyone say police or narcs when they came into the apartment?

"MINCEY: Let me get myself together first. You see, I'm not for sure everything happened so fast. I can't answer at this time because I don't think so, but I can't say for sure. Some questions aren't clear to me at the present time.

"HUST: Did you shoot anyone?

"MINCEY: I can't say, I have to see a lawyer.

"HUST: Okay, I explained before about an attorney and that you don't have to talk if you don't want to. You can also refuse to answer any individual questions. Are you still willing to talk to me without an attorney present?

"MINCEY: (head shake yes)"

(Respondent's Brief Appendix at 3 and Appellant's Brief 3a and 5a.)

It is true that petitioner indicated later on in the interview that he wanted a lawyer. (State's Exhibit 2, Respondent's Brief Appendix at 7.) However, the whole tenor of the interview is one of willingness on the part of petitioner to talk with Hust. At one point, petitioner suggested they "rap tomorrow". (State's Exhibit 2, Respondent's Brief Appendix at 6.) In fact, at the end of the interview the petitioner asked if Hust was coming back. This is hardly characteristic of an atmosphere of coercion.

Understandably, then, there is no evidence in the record to support petitioner's claim, other than the commands at his arrest, that his statement was the product of coercion. The case at bar can

be contrasted to Clewis v. Texas, supra, where the petitioner was held for thirty-eight hours and interrogated intermittently. During this time he was sick, had little sleep or food, and had no contact with anyone other than police. He was also forced to take polygraph tests and was taken to the grave of his deceased wife. He later repudiated all three of his confessions, the first of which admitted commission of the murder by a means inconsistent with the facts.

Petitioner relies heavily on the fact that Mrs. Graham, "the one person he should have been able to turn to", "encouraged him to respond to Detective Hust's questioning". (Petitioner's Brief at 22.) In point of fact, Mrs. Graham at one point merely told petitioner that "it might help" if he cooperated. (App. at 66; H.T.F. at 203.) In addition, respondent would point out that Nurse Graham witnessed the statement and

concluded that petitioner's statement was voluntary. See Exhibit "D", pp. 3a and 3b, Respondent's Brief Appendix. There is no indication of repeated importuning or overreaching, as petitioner seems to imply. Further, a suggestion that "it might help" to cooperate with Detective Hust surely does not amount to coercion, or anything approaching it. This is especially so in view of the fact that Mrs. Graham did not participate in any of the questioning. (App. at 61-67; H.T.F. at 193-206.) Finally, it appears from Mrs. Graham's testimony that petitioner was extremely cooperative and independent of her suggestion to him. (App. 66; H.T.F. at 203; State's Exhibit 2.)

Petitioner cites Sims v. Georgia, 389 U.S. 404 (1967); Haynes v. Washington, 373 U.S. 503 (1963); Fikes v. Alabama, 352 U.S. 191 (1957); and Haley v. Ohio, 332 U.S. 596 (1948) for the proposition that isolation

from one's friends and counsel is an important factor in determining voluntariness vel non. This principle is certainly correct, but has no application here. In all the cases cited by petitioner, the accused persons were cut off from the outside world as a conscious ploy by police to obtain incriminating statements. For example, in Haynes the petitioner was held for sixteen hours before he confessed. During that time the police refused his requests to call his wife and an attorney. In fact, he was told he would not be allowed to call anyone until he cooperated and gave a written confession. Similarly, in Fikes the petitioner was arrested for "investigation" and purposely isolated from his family and counsel. In contrast, in this case petitioner was "isolated" not as a result of police design, but because he was being treated for gunshot wounds in a hospital. There was no evidence that his friends or

family were refused permission to see him. Moreover, Detective Hust in fact answered his questions about Debbie Johnson, and assured petitioner he would let someone at the air base know where he was and have them contact someone for him. (State's Exhibit 2, Respondent's Brief Appendix at 5.) This is clearly not a case of incommunicado detention as petitioner seems to imply.

Petitioner also argues the voluntariness of his statements was affected by his lack of experience with the police. The record contains no evidence that he lacked experience with the police. The record likewise fails to support an inference that petitioner was drugged at the time he was questioned. Although Dr. Martin Silverstein testified he had received resuscitative drugs at the time of his admission to the hospital (App. 82-83; T.T., June 3, 1975 at 26-27), there is no evidence of what the effects of those drugs were and whether they

continued to affect him at the time of questioning. There is also no evidence that petitioner received any drugs in intensive care, or that he was under the influence of any mind-affecting drug at that time. (See App. 61-67; H.T.F. at 193-206.) The situation in Townsend v. Sain, 372 U.S. 293 (1963), stands in marked contrast. There the record contained allegations that the petitioner was a heroin addict and that he was injected with phenobarbital and hyoscine, which acts as a "truth serum", shortly before he confessed. There was also evidence that he was unusually susceptible to these drugs because of his addiction. This Court held that if proved, these allegations would establish his confession as involuntary. There is no similar evidence in this case whatsoever.

Despite petitioner's assertions, the record reasonably supports only one

conclusion -- that his statements to Detective Hust were wholly voluntary. Petitioner's replies throughout the interview were responsive and lucid and indicated attentive comprehension of all that Detective Hust said. He was cooperative throughout the interview, stating that "[w]e'll get it together" and "[t]his information was given so that it might bring this case to an end". (Respondent's Brief Appendix at 2, Defendant's Exhibit D.) Moreover, at the beginning of the interview Detective Hust advised him of his constitutional rights, reminding him of his right to counsel when petitioner requested a lawyer and offering to terminate the interview if petitioner so desired. (App. 50; State's Exhibit 2; H.T.F. at 169.) By affirmative nods of his head, however, petitioner indicated he still wished to talk to Detective Hust. (State's Exhibit 2, Respondent's Brief Appendix at 3 and Defendant's Exhibit D, Respondent's Brief Appendix at 3a and 5a.)

Petitioner's greatest overall emphasis is on the supposed denial of his right to counsel, and on his own physical condition and how it might have affected the voluntariness of his statements. As this Court recognized in a similar context in Procunier v. Atchley, 400 U.S. 446 (1971), however,

> "Low intelligence, denial of the right to counsel, and failure to advise of the right to remain silent were not in themselves coercive. Rather they were relevant only in establishing a setting in which actual coercion might have been exerted to overcome the will of the suspect."
>
> (400 U.S. 446, 543-54.)

Even assuming a setting under which petitioner was more susceptible to coercion, it is plain from the record that no coercion in any form occurred within the meaning of Procunier, supra. Petitioner does not contend Detective Hust physically or verbally abused him, and it is clear from the flow of

the interview that this did not occur. (State's Exhibit 2.) Further, petitioner's physical needs were attended to, and medical aid was not conditional on his answering questions. Both Detective Hust and Mrs. Graham testified that no promises, threats or physical or mental coercion were used at any time. (App. at 58-59, 63; H.T.F. at 184-85, 196.) This was not contradicted by petitioner. Moreover, Detective Hust respected petitioner's physical condition and allowed him to rest when he appeared tired. (App. at 59-60; H.T.F. at 186-87.) Finally, petitioner was consistently cooperative during his stay in the intensive care unit. (App. at 66; H.T.F. at 203.) The totality of the circumstances belie the view that his statements were involuntary and instead substantiates the trial court's conclusion that they were, in fact, voluntary.

CONCLUSION

The "Arizona Murder Scene Exception" is a reasonable exception to the general rule requiring search warrants before the conducting of a search. Here the public need for the "Arizona Exception" far outweighs the Fourth Amendment interest of the individual. Even should this Court be unwilling to adopt the "Arizona Murder Scene Exception", the search of petitioner's apartment was reasonable under the "totality of the circumstances".

The trial court correctly allowed the prosecutor to cross-examine petitioner concerning two of his prior statements because they were inconsistent with his testimony at trial. The prior statements were voluntarily made.

Because of this, the judgments and sentences affirmed by the Arizona Supreme

Court in this case should be affirmed by this Court, see footnote 22, supra.

Respectfully submitted,

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January 1978

SUPPLEMENTARY REPORT

[illegible]	OCTOBER 28, 1974		REPORT [illegible]
[illegible] HOMICIDE/[illegible], MARC [illegible]	1150 E. [illegible] APT. [illegible]		
[illegible], [illegible]	[illegible] S. [illegible]		[illegible]
RUFUS JUNIOR [illegible]	1150 E. 9TH ST.	[illegible] POSS OF [illegible] FOR SALE	

CASE STATUS: [illegible] SUSPENDED [illegible]

DETAILS OF SUPPLEMENTAL INFORMATION

On OCTOBER 25TH, 1974, received a phone call at the station along with DETECTIVE [illegible] arriving and advising us that there was a shooting involved in a narcotic transaction at 1150 E. 9TH and we were to report there as per request of CAPTAIN [illegible]. That time I arrived at the apartment upon briefly checking it out SGT. [illegible] arrived and assigned me to go to ARIZONA MEDICAL CENTER to handle the investigation at that location.

Upon my arrival at ARIZONA MEDICAL CENTER, was met by MR. [illegible], who advised me to use his office which was being set up as a command post. DETECTIVE CHARLIE [illegible] was already in the office and making some phone calls. DETECTIVE [illegible] advised me that [illegible] was in the emergency room being worked on at the present time. A short time later, we were informed that the three suspects were arriving out front. That time I asked DETECTIVE [illegible] to make a phone call to the desk to get some uniform people up here for security reasons.

MR. [illegible] then came out of the emergency room and I asked him the condition of [illegible]. He advised me that [illegible] had expired. I then notified DETECTIVE [illegible] the information I had just received and told him to call the Police Station. I then got a hold of SGT. [illegible] on the air and advised him that we had a homicide.

A short time later, SGT. [illegible] arrived and took charge of the security within the [illegible]. I was then asked by people in the hospital to remove handcuffs from two of the suspects. I then went into the emergency room while the doctors and nurses were working on the patients and removed the handcuffs. MR. [illegible] then got a hold of me and asked me if I could get a hold of [illegible], who is the hospital pathologist so that he could release DETECTIVE [illegible] property to me. Upon getting a hold of MR. [illegible], he did release the property of DETECTIVE [illegible] to me. In giving this property to me it was placed in two bags.

DETECTIVE WALTER [illegible] removed and took possession of the property from the other three wounded persons. I stayed at the emergency room until such time as the suspects were put into other rooms either in the operating room or shifted to a different floor. I then proceeded to the Intensive Care Unit to talk with a RUFUS [illegible]. I then arrived at the Intensive Care Unit and talked with a [illegible], along with a FRANK SHARPE, who is the Service Coordinator of the Intensive Care Unit and MISS [illegible] is the nurse who is working in the Intensive Care Unit on that day.

[illegible]

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APPENDIX 1

BEST COPY AVAILABLE

TUCSON POLICE DEPARTMENT SUPPLEMENTARY REPORT

CONNECT-UP REPORT NO. ____

DATE OF ORIGINAL REPORT: OCT. 23, 1973 OFFENSE CLASS: CRIMINAL HOMICIDE/MURDER NARC DRUG LAWS/POSS PAGE 2 OF ____

CONTINUATION OF NARRATIVE:

Upon receiving permission to talk with RUFUS MINKEY, the nurse ELIZABETH GRAHAM did give me a note which she had just received from him. It is unknown what conversation MISS GRAHAM had wit him, however, the note said that he knocked at my door, I thought he was cool he had a 38 today. This was signed by MISS GRAHAM and taken into evidence by myself.

On OCTOBER 28TH, 1973, at 2015 hours, I went into interview MR. RUFUS MINKEY at ARIZONA MEDICAL CENTER INTENSIVE CARE UNIT.. At that time present were ELIZABETH S. GRAHAM and a MR. ... CHAPP. I asked one of them to be present to witness anything that he may voluntarily give to me. In starting out the conversation I introduced myself as DETECTIVE HUST from the TUCSON POLICE DEPARTMENT and told him that a friend of his CHUCK was in the hospital with a head wound and we had to try to get as much information as we could on this CHUCK, due to the fact we had not contacted any family or did not know the last name. The subject RUFUS MINKEY was laying in the b... being fed intravenously. He also had a tube down his throat, I believe it was some type of breathing apparatus, and could not talk under these conditions. The nurse did report, however, th... he could write and would write.

Upon my first checking with MR. MINKEY, he appeared to be very alert and could respond to all my questions. On several occasions during the questioning he did roll his eyes back in a manner in which he was thinking of what the answer should be to my questions. After talking to him about the person known as CHUCK and he did write me some notes which a pad was supplied by the nurse. I advised him of his Constitutional Rights off the Miranda Rights Card. That time he nodded his head "yes" when he was asked if he understood his rights and also "yes" when asked if he would answer my questions.

In regards to his written statement the question and answers which in his own writing will be placed in the Property Section are as follows.

HUST: Do you know a guy named CHUCK who was shot in the head? I advised him he was in serious condition.

MINKEY: I know him for two days.

HUST: Do you know his name?

MINKEY: Dude with the beard?

HUST: Yes, I think so.

MINKEY: CHUCK.

HUST: Do you know his last name or where he lives?

MINKEY: FAIR.

HUST: He lives on FAIR?

MINKEY: He has a ride on the fair in SOUTH TUCSON.

HUST: Who can we get hold of that knows him?

MINKEY: Everybody know everybody.

HUST: I then proceeded to advise him of his Constitutional Rights, also advised him that he was under arrest and charged with killing a police officer. I then went on to

continued...

Officer Reporting ____ Name ____ Division ____

TUCSON POLICE DEPARTMENT SUPPLEMENTARY REPORT

CONNECT-UP REPORT NO. ____

DATE OF ORIGINAL REPORT: OCT. 28, 1973 OFFENSE CLASS: CRIMINAL HOMICIDE/MURDER NARC DRUG LAWS/POSS PAGE 3 OF ____

CONTINUATION OF NARRATIVE:

question him. What do you remember that happened?

MINKEY: I remember somebody standing over me saying "Move nigger, move." I was on the floor beside the bed.

HUST: Do you remember shooting anyone or firing a gun?

MINKEY: This is all I can say without a lawyer.

HUST: If you want a lawyer now, I cannot talk to you any longer, however, you don't have to answer any questions you don't want to. Do you still want to talk to me?

MINKEY: (Shook his head in an affirmative manner.)

HUST: What else can you remember?

MINKEY: I'm gonna have to put my head together. There are so many things that I don't remember I like how did they get into the apartment?

HUST: How did who get into the apartment?

MINKEY: Police.

HUST: Did you sell some narcotics to the guy that was shot?

MINKEY: Do you me, did he give me some money?

HUST: Yes.

MINKEY: No.

HUST: Did you give him a sample?

MINKEY: What do you call a sample?

HUST: A small amount of drug or narcotic to test?

MINKEY: I can't say without a lawyer.

HUST: Did anyone say police or narcs when they come into the apartment?

MINKEY: Let me get myself together first. You see, I'm not for sure everything happened so fast. I can't answer at this time because I don't think so, but I can't say for sure. Some questions aren't clear to me at the present time.

HUST: Did you shoot anyone?

MINKEY: I can't say, I have to see a lawyer.

HUST: Okay, I explained before about an attorney and that you don't have to talk if you don't want to. You can also refuse to answer any individual questions. Are you sti... willing to talk to me without an attorney present?

MINKEY: (head again yes)

HUST: Do you know what you are charged with?

MINKEY: I am charged with murder, so the policeman says.

HUST: Yes, that's right.

MINKEY: Where is DEBRA?

continued...

Officer Reporting ____ I.D. No. ____ Date ____ Time ____

Name ____ Division ____

TUCSON POLICE DEPARTMENT SUPPLEMENTAL REPORT

CONNECT-UP REPORT NO. _____

DATE OF ORIGINAL REPORT: OCT. 23, 1978 | ORIGINAL CLASS: CRIMINAL HOMICIDE/MURDER MARC DRUG LABS/FOSS | PAGE 1 OF _____

CONTINUATION OF NARRATIVE:

HUNT: She is in. She's in the hospital. She is shot, but she will be alright. Do you know which one the policeman was?
MCKINNEY: I don't know who the policemen are. Which one was the nare?

HUNT: He was the one who took the sample or made a buy and then later came in the bedroom.
MCKINNEY: Did he have one cowboy boots?

HUNT: Yes.
MCKINNEY: There are alot of things that aren't clear.

HUNT: We arrested two other guys.
MCKINNEY: Two guys arrested?

HUNT: Yes.
MCKINNEY: The one with the beard?

HUNT: Yes and JOSE.
MCKINNEY: JOSE! Who else?

HUNT: [illegible] and some 16 year old girl.
MCKINNEY: When do we go to trial?

HUNT: It will be awhile, first you have to get out here.
MCKINNEY: You didn't see anyone else, anybody else?

HUNT: I wasn't there when this happened.
MCKINNEY: No one saw anybody else?

HUNT: Where?
MCKINNEY: In the apartment.

HUNT: I don't know, but I don't think so. Was there suppose to be someone else?
MCKINNEY: We'll get it together.

HUNT: Who is "we"?
MCKINNEY: (points to both myself and him)

HUNT: Will you sign your name on this and write that it was a voluntary and that you didn't want an attorney present.
MCKINNEY: Why?

HUNT: To show it was voluntary and you gave it and you didn't want an attorney present.
MCKINNEY: It's weird, I I can't sign.

HUNT: Ah, it's not weird your nerve and I and FR. [illegible] witnessed it.
MCKINNEY: I have to sign things in the blind. This information was given so that it might not this case to an end.
[illegible] then wrote out something and made me print my name next to it. The question

Given to [illegible] for FBI Date _____ Time _____

Name _____ Person _____

TUCSON POLICE DEPARTMENT SUPPLEMENTAL REPORT

CONNECT-UP REPORT NO. _____

DATE OF ORIGINAL REPORT: OCT. 23, 1978 | ORIGINAL CLASS: CRIMINAL HOMICIDE/MURDER MARC DRUG LABS/FOSS | PAGE 3 OF _____

CONTINUATION OF NARRATIVE:

wrote is, you asked me some questions, and I answered to the best of my ability at the present time. This is not to say I can't change my information at a later date because I'm not sure as of now. At that time I printed my name in the space he left blank on the side. MCKINNEY also wrote a note and this continued from the bottom of page two it will be.

MCKINNEY: This writing was used a means of talking because I could not talk at the time of the interview.
HUNT: Is there anything else you want to tell us?
MCKINNEY: If it is possible to get a lawyer now, we can finish the talk.

HUNT: (He could direct me in the right direction whereas without a lawyer I might say something thinking it means something else. I leave now and let you get some rest.
MCKINNEY: Is it still inside me?

HUNT: I don't know.
MCKINNEY: My right leg, I can't use it. I can't even move it the pain is unbearable.

HUNT: In a couple days, you'll feel better.
MCKINNEY: I'll help you if I can or everyway possible.

then
MCKINNEY also wrote a note on the bottom my name is Lyt. and then crossed that out and then wrote ARI RUFUS J. MCKINNEY, DOCTOR DAVIS MEMORIAL CLINIC. [illegible] 1950 and then stop. Also wrote a note Would you please let someone know where I am. HUNT responded yes, don't worry we'll let them in or and have them contact someone for you. This was the end of the first interview at 2013 hours, 23 OCTOBER 1978.

Initial interview with RUFUS MCKINNEY.

HUNT: RUFUS, I just talked with SGT. [illegible] and he said they had JOSE someone and he is talking. Is there anything else you want to tell us about anyone leaving the apart or following the guy that made the guy out of the apartment. Did JOSE and his girlfriend leave the apartment for a walk?
MCKINNEY: Nobody knew JOSE and his old lady went for a talk to see where CHUCK went. They ca back and said CHUCK was in the car with two guys. One of the guys came with Christ He left and when he came back all hell broke loose.

HUNT: What do you mean "all hell broke loose."?
MCKINNEY: When he came back a bust took place.

HUNT: A what took place? I can't read that word.
MCKINNEY: Bust, bust.

HUNT: Do you know it was a bust?
MCKINNEY: You see, I'm not sure. People were all over the house. I couldn't figure out whether it was a bust or rip off.

HUNT: Did you have a gun in the house, or do you own a gun?
MCKINNEY: I have a gun in the house.

Given to [illegible] for FBI Date _____ Time _____

Name _____ Person _____

CONTINUATION OF NARRATIVE:

HUNT: What kind?
MCKEEVY: 38?.

HUNT: Where do you keep it in the house?
MCKEEVY: No place in prticular. I showed it to CHUCK and he showed me his.

HUNT: What kind of a gun did CHUCK have?
MCKEEVY: Looked like a 38 SP.

HUNT: When this guy left the house, did he take any narcotics with him to his car?
MCKEEVY: Take to the car with him?

HUNT: Yeah, did he leave with drugs or narcotics.
MCKEEVY: He didn't take any drugs out of the apartment, that's for sure.

HUNT: Who did he leave the house with?
MCKEEVY: When he left?

HUNT: Yes.
MCKEEVY: By his self. MCKEEVY signs the paper KEVIN J. MCKEEVY. Underneath he said "I can sign this because I remember these things, not because JOHN is talking some bull shit."

This interview was terminated at 2230 hours, on 10-28-78. Another interview at 2255 hours on 11-28-78.

HUNT: KEVIN, I have a few more questions. I don't think your telling us everything.
MCKEEVY: That's why I have to have time to redo everything that happened in my mind.

HUNT: Who answered the door with the gun?
MCKEEVY: Nobody answered the door with gun.

HUNT: Did JOE! answer the door with a gun?
MCKEEVY: JOE! didn't have a gun.

HUNT: Yes, he did. CHUCK gave him his gun.
MCKEEVY: Do see, that's something on me. I was in the bedroom. Let's me tomorrow, late to date. I can't give facts.

HUNT: I think you can give facts.
MCKEEVY: If something happens that I don't know about why would CHUCK give JOE! his gun if he came with the guy?

HUNT: I don't know.
MCKEEVY: Quote questions I need to know.

HUNT: Go ahead.
MCKEEVY: When I heard all the noise, I run out to check it out. Then I went back to the room.

Other Persons Contacted: _____ Time _____ Date _____

Name _____ Serial _____

CONTINUATION OF NARRATIVE:

HUNT: Where was CHUCK?
MCKEEVY: Where was CHUCK?

HUNT: Yes.
MCKEEVY: (MCKEEVY shrugged his shoulders in a manner of I don't know.)

HUNT: Did this guy that came into the bedroom have a gun?
MCKEEVY: I can't say for sure. Maybe the guy had a gun.

HUNT: I would rather you stop talking to me than lie to me. If your telling the truth your story will be the same as JOHN'S and the others.
MCKEEVY: If I don't tell any lies I don't have to make things up to make the lie look like the truth. Let JOHN talk, all he can do is tell the truth or caught telling a lie. Sure, sure. I want a good lawyer, I'm charged with murder, that's bad whether you did it or not. You don't have to poove you did something. You have to prove you didn't.

HUNT: You wrong about that, we have to prove you did do something.
MCKEEVY: How many dudes came through that door?

HUNT: Dudes?
MCKEEVY: (Circled dudes)

HUNT: Do you mean cops?
MCKEEVY: (Shook his head Yes in an affirmative manner)

HUNT: I heard ten. Get some rest, I'll talk to you tomorrow when you can get that tube out.
MCKEEVY: What time will you come tomorrow.

HUNT: Sometime in the morning.
MCKEEVY: I'll be waiting. I don't have to like. I want some legal guidance.

HUNT: I'll tell you what an attorney will say. He'll tell you to keep your mouth shut.
MCKEEVY: I can't talk now. What good is this doing? Everybody I have said is the truth. There are alot of things left out. After I get a lawyer, you'll come.

HUNT: Yeah, I'll come.
MCKEEVY: I won't lie.

HUNT: Get some rest, I'll see you later.
MCKEEVY: My leg hurt, I dont to try to go to sleep.

HUNT: Okay,
MCKEEVY: Tell DEBBIE that I miss her.

HUNT: Okay.

Before each of these interviews were taken with KEVIN MCKEEVY, I again asked him if he wanted to talk and when I went into to talk to him and always got an affirmative shake of the head to go ahead. After the interviews with MR. MCKEEVY, I talked to DEBBIE MCKEEVY briefly and told her

Other Persons Contacted: _____ Time _____ Date _____

Name _____ Serial _____

TUCSON POLICE DEPARTMENT SUPPLEMENTAL REPORT

CONNECT UP REPORT NO. ____

DATE OF ORIGINAL REPORT: OCT. 28, 1974 | OFFENSE CLASS: [illegible] HOMICIDE/[illegible] NARC DRUG LAWS/[illegible] | PAGE 3 OF ____

CONTINUATION OF NARRATIVE:

to her condition she was not able to converse in an intelligent manner and I felt that anything that she would say could be construed as she was under the influence of some type of anesthetics. Therefore, no conversation was held with her that night.

At 0730, on OCTOBER 29, DETECTIVE [illegible] and I again, interviewed MR. [illegible] and MISS JOHNSON. MR. [illegible] was very difficult to understand and no conversation could be carried on for any period due to the fact that he was under the use of oxygen and had a mask on and made it very difficult to converse or receive an answer. MISS JOHNSON stated in her interview that she was lying on the bed when all this happened. She stated to me [illegible] came running into the bedroom and the shooting started. She said she doesn't know who started shooting, but she rolled off the bed and got into the closet so she wouldn't get hit again. She stated MR. [illegible] did have a gun and he kept it loaded under the bed. This statement was terminated and all the notes will be placed in Police Property.

I also talked with a DOCTOR FARREL (PH), on the 29TH at which time I requested a diagram of the track of the bullet on [illegible] JOHNSON. Also the track of the bullet on CHUCK FERGUSON and a track of the bullet on RUFUS [illegible]. DOCTOR FARREL (PH) was very cooperative and did small diagrams for me, which are placed in the case file. The personal effects of BARRY [illegible] were placed in Police Property with the exception of the keys which were in his pockets and they were given to OFFICER [illegible] who had need for them for the parents of BARRY [illegible] to get into his apartment and then they were turned over to SGT. [illegible] of the Narcotic Detail. Also three rings that were removed from BARRY [illegible]'S hands were given to SGT. [illegible] to turn over to the family. All other property was marked and placed there in our Police Property by DETECTIVE [illegible].

Also, in the evening of the 29TH 1974, I received word from DOCTOR [illegible] (PH) who is a doctor at the University of Arizona Medical Center after MR. FERGUSON if I wanted to. At that time he told me MR. FERGUSON was not quite up to date on things that happened and I advised DOCTOR [illegible] that I would not talk to him until he appeared to be fully aware of what was going on around him.

MR. [illegible] (PH) was confronted the following day in the hall way and advised me he requested not to talk to his client. I advised MR. [illegible] (PH), that I would not talk to MR. FERGUSON until I felt such time that MR. FERGUSON had full understanding of what was going on about him.

On NOVEMBER 1ST, I visited both MR. [illegible] and MR. FERGUSON at the hospital, however, MR. [illegible] refused to talk to me without talking to his attorney and MR. FERGUSON at that time I still did not feel was quite capable of answering any questions and he also related to me that he would not answer any questions without his attorney being present. All questioning then was then ceased.

[illegible]... I recommend this case be CLEARED AND CLOSED with the arrest of RUFUS [illegible] JR.

Officer Reporting [illegible] | Ser. No. 2345 | Date 11-4-74 | Time 1715

TPD FORM 1400 11-6-73 | Typist [illegible] | Division [illegible]

STATE OF ARIZONA) ss.
COUNTY OF PIMA)

The foregoing instrument is a full, true, and correct copy of the original on file in this office.

Attest: Dec 12 1977

[illegible], Clerk

By [signature]

[illegible]

Elizabeth B. Graham R.N.

2210 10/28/74

Arizona [illegible] Medical Center

Ph 7.44

36

102

98.3

242 40%

A-216669

2223

L. Har 10-28-74

2015

APPENDIX II

15/95 80 20

PROGRESS NOTES

UNIVERSITY OF ARIZONA
ARIZONA MEDICAL CENTER
UNIVERSITY HOSPITAL

[illegible] were present during the writing of these notes [illegible] 10-28-74 2:14 [illegible] University Hospital.

10-28-74
20:15

[illegible] present during this interview [illegible] University Hospital 10-28-74 2:00

I know him for 2 Days
Bud with Beard
Chuck
Said He has A Ride At
the Fair in South Tucs[illegible]

Every body Knew Every body

I Remember some body Standing over
me saying move nigger move I was
in the floor beside the bed.
That is all I
can say without
a lawyer
I'm going to have to put my head
together. there are so many things
that I don't remember. I like how did
they get into the
Apt.

Alice
Began me Did he give me some money (no)
What do you call A sample
I can't say without A lawyer

Let me get my self together first.
You see I'm not for sure every thing
happened so fast. I can't answer at
this time because I don't think so.
But I can't say for sure.
Some questions aren't clear to me at the present
time. This writing was [illegible] a [illegible] of

[illegible] present during the writing of these notes.
[illegible]
[illegible]
[illegible] 3

2100
10-28-74

[illegible] during this interview [illegible] 10-28-74 2100

talking because I could not TALK
at the time of the interview

If It's possible to get a lawyer
now. we can finish the talk.
He could direct me in the right direction
where as without a lawyer I might
saw something thinking that it means something
else. Is it still inside me —
My right leg I can't use it
I can't even move it. The pain
is unbearable. I'll help you if I can
in every way possible

My name is A/C Rufus = Mincey
100 FMS Davis Monthan
Blk 4202 B 24
3550 [illegible]

would you please let
some one know where I
am.

(4)

UNIVERSITY OF ARIZONA
ARIZONA MEDICAL CENTER
UNIVERSITY HOSPITAL

PROGRESS NOTES

I can't say. I have to see a lawyer
I'm charged with murder [illegible] the
policeman says [illegible]
I don't know who the police man was.
which one was the narc
Did he have on cowboy boots. —
There are a lot of things that
aren't clear. Two guys [illegible]
the one with the beard
John, who else — —
when Do we get [illegible]
You didn't see anybody else
No one saw anybody else. In
the Apt. — We'll get it together
why. It's void I — don't sign
I hate to sign things in the Blind

This information was given
So that It might bring this case to a end.
[illegible] asked me some questions and
I answered to the best of my ability
at the present time. This is not
to say I can't change my information
at a later Date, because I'm not
sure as of now

(Hust —)

(1)

6a

UNIVERSITY OF ARIZONA
ARIZONA MEDICAL CENTER
UNIVERSITY HOSPITAL

FLOW SHEET

[illegible stamped/handwritten patient identification block]
12-28-74

10 Days [illegible] + the old lady
went for a week to [illegible]
chuck went. they came back and
said chuck was in the car with
2 guns. [illegible] came
with chuck. he left and
when he came back all hell
turned loose. then he came
back a ~~[illegible]~~ took
place. First you see
I'm not for sure. [illegible]
was all over the house
I couldn't figure out whether
it was a [illegible] or [illegible] off.
I have a gun in the house
380 [illegible] in particular I
showed it to chuck and he showed
me ~~[illegible]~~ his. Look like a 38 [illegible].
Take to the car with him
(he didn't take any drugs
out of the apt) this for sure
when he left by his self.

[signature]

-6-

5

I can sign this because I remember
some things. not because [illegible]
is telling some bullshit

(6)

UNIVERSITY OF ARIZONA
ARIZONA MEDICAL CENTER
UNIVERSITY HOSPITAL

FLOW SHEET

Susan present while the
Pt. voluntarily wrote
this. Elizabeth [illegible]
10-28-74 2320

Thats why I have To have time to Redo ~~the~~
every thing that happened in my mind.

nobody answered Door [illegible]
gun.
John Didn't have A gun
you see that's something
on me. I was in the
Bed Room. Lets
Rap tomorrow face to
face. I can't give facts
If something happens that
I don't Know about. why
would Chuck give John
his gun if he came
with the guy

Questions I need to
Know.
when I heard all the
noise I run out
to Check it out then
I went Back to the
Bed room. where was Chuck
I can't say for sure maby
the Guy had a Gun

UNIVERSITY OF ARIZONA
ARIZONA MEDICAL CENTER
UNIVERSITY HOSPITAL

FLOW SHEET

Susan present while the
Pt. voluntarily wrote
this. Elizabeth [illegible]
10-28-74 2320

If I don't Tell any Lies I don't
have to make things up to make
the Lie Look Like the truth. Let
John talk. all he can do is tell the
truth or get Caught telling A Lie.
Same, Same I want a good Lawyer
I charged with murder thats bad
weather you did it or not. You Don't
have to prove you did something
You have to " " didn't.

Ohd. how Many ~~dudes~~ came
through that door.
what Time will you come tomorrow.
I'll be waiting I Don't have to Like
I want some Legal guidance
I can't talk now what good
is this doing. Every thing I have said
is the truth. There are A lot of thing
Left out. After I get A Lawyer
y'all come. I won't Lie
my leg hurt I want to try to go to sleep
Tell Deb That I miss her

STATE OF ARIZONA } ss.
COUNTY OF PIMA }

The foregoing instrument is a full, true, and correct copy of the original on file in this office.

Attest [illegible] 77

NORMA M. [illegible], Clerk

Endo—Cont.

Children—2 to 6 years, ½ tablet twice daily.
How Supplied: As oval pink, scored tablets in bottles of 100 and 500.
Oral prescription where permitted by state law.

HYCOMINE® PEDIATRIC Syrup

Description: Each teaspoonful (5 ml) contains:

Hydrocodone bitartrate	2.5 mg

(Warning: May be habit forming)

Homatropine methylbromide	0.75 mg
Pyrilamine maleate	6.25 mg
Phenylephrine hydrochloride	5.0 mg
Ammonium chloride	30.0 mg

Actions: Hydrocodone bitartrate is an effective semisynthetic narcotic antitussive. Phenylephrine hydrochloride provides nasal decongestion.
Indications: To control cough and to provide symptomatic relief of congestion in the upper respiratory tract due to the common cold, pharyngitis, tracheitis, and bronchitis.
Contraindications: Hypersensitivity to any components of the drug, and in patients with glaucoma, pyloric obstruction, or prostatic hypertrophy.
Precautions: Use with caution in diabetes, hyperthyroidism, hypertension and cardiovascular disease. Since blurred vision, drowsiness and dizziness may occur, patients should be cautioned about activities requiring alertness.
Before prescribing antitussive medication to suppress or modify cough, it is important to ascertain that the underlying cause of the cough is identified, that modification of the cough does not increase the risk of clinical or physiologic complications, and that appropriate therapy for the primary disease is provided.
Adverse Reactions: HYCOMINE Syrup is generally well tolerated. Occasional drowsiness, blurred vision, cardiac palpitation, dizziness, nervousness, dryness of the mouth or gastrointestinal upset may occur.
Dosage and Administration:

Children	
4 months to 1 year	10 drops
1 to 3 years	½ teaspoonful (20 drops)
3 to 6 years	½ teaspoonful
6 to 12 years	1 teaspoonful
over 12 years	2 teaspoonfuls

Administer after meals and at bedtime, not less than 4 hours apart.
Supplied: As a green-colored, fruit-flavored syrup.
Oral prescription where permitted by state law.

HYCOMINE® Syrup

Description: Each teaspoonful (5 ml) contains:

Hydrocodone bitartrate	5.0 mg

(Warning: May be habit forming)

Homatropine methylbromide	1.5 mg
Pyrilamine maleate	12.5 mg
Phenylephrine hydrochloride	10.0 mg
Ammonium chloride	60.0 mg

Actions: Hydrocodone bitartrate is an effective semisynthetic narcotic antitussive. Phenylephrine hydrochloride provides nasal decongestion.
Indications: To control cough and to provide symptomatic relief of congestion in the upper respiratory tract due to the common cold, pharyngitis, tracheitis, and bronchitis.
Contraindications: Hypersensitivity to any component of the drug, and in patients with glaucoma, pyloric obstruction, or prostatic hypertrophy.
Precautions: Use with caution in diabetes, hyperthyroidism, hypertension, cardiovascular disease and in the aged. Since blurred vision, drowsiness and dizziness may occur, patients should be cautioned about driving or operating machinery.
Before prescribing antitussive medication to suppress or modify cough, it is important to ascertain that the underlying cause of the cough is identified, that modification of the cough does not increase the risk of clinical or physiologic complications, and that appropriate therapy for the primary disease is provided.
Adverse Reactions: HYCOMINE Syrup is generally well tolerated. Occasional drowsiness, blurred vision, cardiac palpitation, dizziness, nervousness, dryness of the mouth or gastrointestinal upset may occur.
Dosage and Administration: Usual Adult Dose: One teaspoonful after meals and at bedtime, not less than 4 hours apart.
Supplied: As an orange-colored, fruit-flavored syrup.
Oral prescription where permitted by state law.

NARCAN® INJECTION

(Naloxone Hydrochloride)

Description: NARCAN (naloxone hydrochloride), a narcotic antagonist, is a synthetic congener of oxymorphone. In structure it differs from oxymorphone in that the methyl group on the nitrogen atom is replaced by an allyl group.
Each ml of the injectable aqueous solution NARCAN contains:

Naloxone hydrochloride	0.4 mg
Sodium chloride U.S.P.	8.6 mg
Methylparaben and Propylparaben in a ratio of 9 to 1	2.0 mg
Water for injection	q.s. ad 1.0 ml

pH is adjusted with hydrochloric acid.
Naloxone hydrochloride occurs as slightly off-white crystals, and is soluble in water, slightly soluble in alcohol and practically insoluble in ether.
Actions: NARCAN (naloxone hydrochloride) is an essentially pure narcotic antagonist, i.e., it does not possess the "agonistic" or morphine-like properties characteristic of other narcotic antagonists. NARCAN does not produce respiratory depression, psychotomimetic effects or pupillary constriction. In the absence of narcotics or agonistic effects of other narcotic antagonists it exhibits essentially no pharmacologic activity.
In the presence of physical dependence on narcotics NARCAN will produce withdrawal symptoms; it has not been shown to produce tolerance nor to cause physical or psychological dependence.
When NARCAN is administered intravenously the onset of action is generally apparent within two minutes; the onset of action is only slightly less rapid when it is administered subcutaneously or intramuscularly.
Indications: NARCAN is indicated for the complete or partial reversal of narcotic depression, including respiratory depression, induced by natural and synthetic narcotics, and the narcotic-antagonist analgesic, pentazocine. NARCAN is also indicated for the diagnosis of suspected acute opiate overdosage.
Contraindications: NARCAN is contraindicated in patients known to be hypersensitive to it.
Warnings: NARCAN should be administered cautiously to persons who are known or suspected to be physically dependent on narcotics. In such cases an abrupt and complete reversal of narcotic effects may precipitate an acute abstinence syndrome.
The patient who has satisfactorily responded to NARCAN should be kept under continued surveillance and repeated doses of NARCAN should be administered, as necessary, since the duration of action of some narcotics may exceed that of NARCAN.
NARCAN is not effective against respiratory depression due to non-narcotic drugs.
Usage in Neonates: NARCAN has been administered intramuscularly to a limited number of newborn infants in the usual adult dosage of 0.005 mg/kg (5 micrograms/kg) without adverse effects on heart rate, respiratory rate, tidal volume, minute volume, blood pH and P_{CO_2}. However, adequate data to establish the effectiveness of NARCAN in newborns are not available. Further, the concentration of NARCAN is such that dilution would be required. Therefore, use of NARCAN in neonates is not recommended.
Usage in Pregnancy: Safe use of NARCAN during pregnancy (other than labor) has not been established. Animal reproduction studies have not demonstrated teratogenic or other embryotoxic effects (See ANIMAL PHARMACOLOGY AND TOXICOLOGY). However, NARCAN should be administered to pregnant patients only when, in the judgment of the physician, the potential benefits outweigh the possible hazards.
Usage in Children: Safe and effective use in children has not been established.
Precautions: In addition to NARCAN, other resuscitative measures such as maintenance of a free airway, artificial ventilation, cardiac massage, and vasopressor agents should be available and employed when necessary to counteract acute narcotic poisoning.
The use of NARCAN at recommended doses, including administration to surgical and obstetrical patients, has not been associated with hemorrhagic disorder or with abnormal coagulation test results. In an uncontrolled study, elevated partial thromboplastin times (PTT, without bleeding, were reported in several subjects who had received multiple doses totaling more than 20 times the recommended dose. Subsequent single dose studies did not confirm these results. However, should bleeding occur following NARCAN administration, a complete coagulation work-up, including PTT, is indicated.
Adverse Reactions: In rare instances nausea and vomiting have been reported in postoperative patients receiving NARCAN in doses higher than that recommended; a cause and effect relationship has not been established.
Dosage and Administration: NARCAN (naloxone hydrochloride) may be administered intravenously, intramuscularly, or subcutaneously. The most rapid onset of action is achieved by intravenous administration and it is recommended in emergency situations.
The usual initial adult dose is 0.4 mg (1 ml). NARCAN administered I.V., I.M. or S.C. If the desired degree of counteraction and improvement in respiratory function is not obtained immediately, it may be repeated at 2 to 3 minute intervals. Failure to obtain significant improvement after 2 or 3 doses suggests that the condition may be due partly or completely to other disease processes or non-narcotic drugs.
Since the duration of action of some narcotics may exceed that of NARCAN the patient should be kept under continued surveillance and repeated doses of NARCAN should be administered, as necessary.
How Supplied: 0.4 mg/ml of NARCAN (naloxone hydrochloride) for intravenous, intramuscular and subcutaneous administration.

APPENDIX III

Available in 10 ml vials and 1 ml ampuls in boxes of 10 and 100.

Animal Pharmacology and Toxicology: In the mouse and rat the intravenous LD_{50} is 180 ± 5 mg/kg and 109 ± 4 mg/kg respectively. In acute subcutaneous toxicity studies in newborn rats the LD_{50} (95% CL) is 280 (233–280) mg/kg. Subcutaneous injection of 100 mg/kg/day in rats for 3 weeks produced only transient salivation and partial ptosis following injections; no toxic effects were seen at 10 mg/kg/day for 3 weeks.

Reproductive studies including fertility, general reproductive performance, embryotoxicity, teratogenicity, and lactation did not show any abnormality in mice and rats at 10 mg/kg/day.

U.S. Pat. 3,254,088

PERCODAN®
PERCODAN®-DEMI

Ⓒ

Description:

Each yellow, scored tablet of PERCODAN contains

Oxycodone hydrochloride	4.50 mg
Warning: May be habit forming	
Oxycodone terephthalate	0.38 mg
Warning: May be habit forming	
Aspirin	224 mg
Phenacetin	160 mg
Caffeine	32 mg

Each pink, scored tablet of PERCODAN-Demi contains

Oxycodone hydrochloride	2.25 mg
Warning: May be habit forming	
Oxycodone terephthalate	0.19 mg
Warning: May be habit forming	
Aspirin	224 mg
Phenacetin	160 mg
Caffeine	32 mg

The oxycodone component is 14-hydroxydihydrocodeinone, a white odorless crystalline powder which is derived from the opium alkaloid, thebaine.

Actions: The principal ingredient, oxycodone, is a semisynthetic narcotic analgesic with multiple actions qualitatively similar to those of morphine; the most prominent of these involve the central nervous system and organs composed of smooth muscle. The principal actions of therapeutic value of the oxycodone in PERCODAN are analgesia and sedation.

Oxycodone is similar to codeine and methadone in that it retains at least one half of its analgesic activity when administered orally.

PERCODAN also contains the non-narcotic antipyretic-analgesics, aspirin and phenacetin.

Indications: For the relief of moderate to moderately severe pain.

Contraindications: Hypersensitivity to oxycodone, aspirin, phenacetin or caffeine.

Warnings:

Drug Dependence: Oxycodone can produce drug dependence of the morphine type and, therefore, has the potential for being abused. Psychic dependence, physical dependence and tolerance may develop upon repeated administration of PERCODAN, and it should be prescribed and administered with the same degree of caution appropriate to the use of other oral narcotic-containing medications. Like other narcotic-containing medications, PERCODAN is subject to the *Federal Controlled Substances Act*.

Usage in ambulatory patients: Oxycodone may impair the mental and/or physical abilities required for the performance of potentially hazardous tasks such as driving a car or operating machinery. The patient using PERCODAN should be cautioned accordingly.

Interaction with other central nervous system depressants: Patients receiving other narcotic analgesics, general anesthetics, phenothiazines, other tranquilizers, sedative-hypnotics or other CNS depressants (including alcohol) concomitantly with PERCODAN may exhibit an additive CNS depression. When such combined therapy is contemplated, the dose of one or both agents should be reduced.

Usage in pregnancy: Safe use in pregnancy has not been established relative to possible adverse effects on fetal development. Therefore, PERCODAN should not be used in pregnant women unless, in the judgment of the physician, the potential benefits outweigh the possible hazards.

Usage in children: PERCODAN should not be administered to children. PERCODAN-Demi, containing half the amount of oxycodone, can be considered. (See product prescribing information for PERCODAN-Demi.)

Salicylates should be used with caution in the presence of peptic ulcer or coagulation abnormalities.

Precautions:

Head injury and increased intracranial pressure: The respiratory depressant effects of narcotics and their capacity to elevate cerebrospinal fluid pressure may be markedly exaggerated in the presence of head injury, other intracranial lesions or a preexisting increase in intracranial pressure. Furthermore, narcotics produce adverse reactions which may obscure the clinical course of patients with head injuries.

Acute abdominal conditions: The administration of PERCODAN or other narcotics may obscure the diagnosis or clinical course in patients with acute abdominal conditions.

Special risk patients: PERCODAN should be given with caution to certain patients such as the elderly or debilitated, and those with severe impairment of hepatic or renal function, hypothyroidism, Addison's disease, and prostatic hypertrophy or urethral stricture.

Phenacetin has been reported to damage the kidneys when taken in excessive amounts for a long time.

Adverse Reactions: The most frequently observed adverse reactions include light-headedness, dizziness, sedation, nausea and vomiting. These effects seem to be more prominent in ambulatory than in nonambulatory patients, and some of these adverse reactions may be alleviated if the patient lies down. Other adverse reactions include euphoria, dysphoria, constipation and pruritus.

Dosage and Administration: Dosage should be adjusted according to the severity of the pain and the response of the patient. It may occasionally be necessary to exceed the usual dosage recommended below in cases of more severe pain or in those patients who have become tolerant to the analgesic effect of narcotics. PERCODAN and PERCODAN-Demi are given orally.

PERCODAN: The usual adult dose is one tablet every 6 hours as needed for pain.

PERCODAN-Demi: Adults—One or two tablets every six hours. Children 12 years and older—One-half tablet every six hours. Children 6 to 12 years—One-quarter tablet every six hours. PERCODAN-Demi is not indicated for children under 6 years of age.

Drug Interactions: The CNS depressant effects of PERCODAN may be additive with that of other CNS depressants. See WARNINGS.

Aspirin may enhance the effect of anticoagulants and inhibit the uricosuric effect of uricosuric agents.

Management of Overdosage

Signs and Symptoms: Serious overdose with PERCODAN is characterized by respiratory depression (a decrease in respiratory rate and/or tidal volume, Cheyne-Stokes respiration, cyanosis), extreme somnolence progressing to stupor or coma, skeletal muscle flaccidity, cold and clammy skin, and sometimes bradycardia and hypotension. In severe overdosage, apnea, circulatory collapse, cardiac arrest and death may occur. The ingestion of very large amounts of PERCODAN may, in addition, result in acute salicylate intoxication.

Treatment: Primary attention should be given to the reestablishment of adequate respiratory exchange through provision of a patent airway and the institution of assisted or controlled ventilation. The narcotic antagonists nalaxone, nalorphine or levallorphan are specific antidotes against respiratory depression which may result from overdosage or unusual sensitivity to narcotics, including oxycodone. Therefore, an appropriate dose of one of these antagonists should be administered, preferably by the intravenous route, simultaneously with efforts at respiratory resuscitation. Since the duration of action of oxycodone may exceed that of the antagonist, the patient should be kept under continued surveillance and repeated doses of the antagonist should be administered as needed to maintain adequate respiration.

An antagonist should not be administered in the absence of clinically significant respiratory or cardiovascular depression.

Oxygen, intravenous fluids, vasopressors and other supportive measures should be employed as indicated.

Gastric emptying may be useful in removing unabsorbed drug.

How Supplied:

PERCODAN—Yellow, scored tablets in bottles of 100, 500 and 1,000; Hospital blister pack of 25 tablets in units of 250 and 1,000 tablets.

PERCODAN-Demi—Pink, scored tablets in bottles of 100, 500 and 1,000.

[Shown in Product Identification Section]

BNDD Order Form Required.

PERCOGESIC®
Analgesic/Calmative

Composition: Each tablet contains:

Acetaminophen (APAP)	325 mg
Phenyltoloxamine citrate	30 mg

Uses: *For relief of mild to moderate pain and discomfort due to simple headache; for temporary relief of such pain associated with muscle and joint soreness, neuralgia, sinusitis, minor menstrual cramps, the common cold or grippe, toothache, and minor aches and pains of rheumatism and arthritis.* The phenyltoloxamine component produces the mild sedation and tranquilization obtained with PERCOGESIC.

Precautions: *If arthritic or rheumatic pain persists for more than 10 days in the presence of redness or swelling, or in arthritis or rheumatic conditions affecting children under 12 years of age, consult a physician immediately. When used for the temporary symptomatic relief of colds, if relief does not occur within three days, discontinue use and consult physician.* This preparation may cause drowsiness. Do not drive or operate machinery while taking this medication. Do not administer to children under six years of age or exceed recommended dosage unless directed by physician.

Administration and Dosage: Adults: 1 or 2 tablets every 4 hours; maximum daily dose 8 tablets. Children: 6-12 years, one-half adult dose; maximum daily dose 4 tablets. Do not use for more than 10 days unless directed by physician.

How Supplied: Non-narcotic PERCOGESIC tablets (orange) are available in blister-strip boxes of 24 and bottles of 100.

Continued on next page

CRIME INDEX TOTALS

The offenses of murder, forcible rape, robbery, aggravated assault, burglary, larceny-theft, and auto theft are used to establish an Index in the Uniform Crime Reporting Program, to measure the trend and distribution of crime in the United States. These crimes are counted by law enforcement agencies as they become known and are reported on a monthly basis. The Crime Index offenses were selected as a measuring device because, as a group, they represent the most common local crime problem. They are all serious crimes, either by their very nature or due to the volume in which they occur. The offenses of murder, forcible rape, aggravated assault, and robbery make up the violent crime category. The offenses of burglary, larceny-theft, and auto theft make up the property crime category.

Law enforcement does not purport to know the total volume of crime, because of the many criminal actions which are not reported to official sources. Estimates as to the level of unreported crime can be developed through costly victim surveys but this does not eliminate the reluctance of the victim to report all criminal actions to law enforcement agencies. In light of this situation, the best source for obtaining useable crime counts is the next logical universe which is the offenses known to the police. The crimes used in the Crime Index are those considered to be most constantly reported and provide the capability to compute meaningful crime trends and crime rates.

The crime counts used in the Crime Index and set forth in this publication are based on actual offenses established by police investigation. When the law enforcement agency receives a complaint of a criminal matter and the follow-up investigation discloses no crime occurred it is "unfounded." On a national average, police investigations "unfound" 4 percent of the complaints concerning Crime Index offenses ranging from 2 percent in the larceny classification to 15 percent in the forcible rape classification. These unfounded complaints are eliminated from the crime counts.

During calendar year 1973, an estimated 8,638,400 Crime Index offenses were reported to law enforcement agencies. This includes total larceny-theft which was used as an Index offense in 1973. Total larceny-theft replaces the "larceny $50 and over" offense category which was previously utilized as an Index offense. All data in this publication uses total larceny-theft for comparative periods. There is a 6 percent increase in estimated volume of Index offenses, 1973 over 1972. The violent crime category made up 10 percent of the Crime Index total and increased 5 percent in volume over 1972. Murder increased 5 percent, forcible rape 10 percent, and aggravated assault 7 percent. Robbery increased 2 percent. The voluminous property crimes as a group increased 6 percent. Auto theft increased 5 percent, larceny-theft increased 5 percent, and burglary was up 8 percent.

Since 1968, the violent crimes as a group have increased 47 percent and the property crimes 28 percent. Crime, as measured by the Crime Index offenses' has risen 30 percent in volume during this five-year period.

The estimated 1973 crime figures for the United States are set forth in the following table titled, "National Crime, Rate, and Percent Change."

National Crime, Rate, and Percent Change

Crime Index Offenses	Estimated crime 1973		Percent change over 1972		Percent change over 1968		Percent change over 1960	
	Number	Rate per 100,000 inhabitants	Number	Rate	Number	Rate	Number	Rate
Total	8,638,400	4,116.4	+5.7	+4.9	+39.7	+33.5	+157.8	+120.3
Violent	869,470	414.3	+4.9	+4.1	+47.2	+40.2	+200.8	+158.6
Property	7,768,900	3,702.1	+5.8	+5.0	+38.0	+31.3	+152.2	+118.5
Murder	19,510	9.3	+5.2	+4.5	+42.2	+34.6	+115.8	+86.0
Forcible rape	51,000	24.3	+9.7	+9.0	+62.1	+54.5	+199.2	+155.6
Robbery	382,680	182.4	+2.1	+1.3	+46.2	+39.2	+256.2	+204.5
Aggravated assault	416,270	198.4	+7.0	+6.2	+46.7	+39.7	+172.8	+132.9
Burglary	2,540,900	1,210.8	+8.0	+7.2	+48.0	+41.4	+181.3	+140.3
Larceny-theft	4,304,400	2,051.1	+4.7	+3.9	+24.8	+18.2	+134.3	+100.3
Auto theft	923,600	440.1	+4.7	+3.9	+19.3	+13.5	+182.0	+141.6

APPENDIX IV

Table 5.—Index of Crime, 1973, Standard Metropolitan Statistical Areas—Continued

Standard Metropolitan Statistical Area	Population	Total crime index	Violent crime	Property crime	Murder and nonnegligent manslaughter	Forcible rape	Robbery	Aggravated assault	Burglary	Larceny-theft	Auto theft
Tallahassee, Fla.	128,000										
(Includes Leon and Wakulla Counties.)											
Area actually reporting	100.0%	5,338	786	4,552	10	88	188	500	1,465	2,688	374
Rate per 100,000 inhabitants		5,015.9	613.0	[illegible]	8.0	[illegible]	157.4	463.9	1,146.0	[illegible]	297.4
Tampa-St. Petersburg, Fla.	1,282,000										
(Includes Hillsborough, Pasco and Pinellas Counties.)											
Area actually reporting	100.0%	78,586	7,125	71,425	151	477	2,883	3,678	25,555	38,824	5,046
Rate per 100,000 inhabitants		6,094.2	555.0	5,539.2	12.0	32.4	223.5	281.3	2,078.2	3,073.2	388.7
Terre Haute, Ind.	174,000										
(Includes Clay, Sullivan, Vermillion and Vigo Counties.)											
Area actually reporting	88.0%	4,828	158	4,668	9	18	38	98	1,717	2,548	388
Estimated total	100.0%	5,120	179	4,941	9	19	39	72	1,777	2,742	422
Rate per 100,000 inhabitants		2,935.6	102.6	2,833.1	5.2	10.9	22.5	33.5	1,018.9	1,572.2	242.0
Toledo, Ohio-Mich.	772,000										
(Includes Fulton, Lucas, Ottawa and Wood Counties, Ohio, and Monroe County, Mich.)											
Area actually reporting	97.3%	34,220	2,667	31,553	62	281	1,477	847	9,288	20,241	2,084
Estimated total	100.0%	34,917	2,722	32,195	62	283	1,491	887	9,422	20,687	2,086
Rate per 100,000 inhabitants		4,516.6	352.2	4,164.3	8.0	36.3	192.9	115.1	1,220.1	2,677.1	267.0
Topeka, Kans.	200,000										
(Includes Jefferson, Osage and Shawnee Counties.)											
Area actually reporting	100.0%	7,313	508	7,480	16	52	150	288	2,228	4,632	244
Rate per 100,000 inhabitants		3,992.3	253.7	3,666.6	6.6	26.0	74.9	143.8	1,113.0	2,462.8	121.8
Trenton, N.J.	312,000										
(Includes Mercer County.)											
Area actually reporting	100.0%	15,602	2,388	13,414	24	77	1,220	728	4,727	6,928	1,948
Rate per 100,000 inhabitants		5,006.4	665.3	4,346.2	7.7	24.6	391.3	233.6	1,512.2	2,211.6	622.2
Tucson, Ariz.	418,000										
(Includes Pima County.)											
Area actually reporting	98.3%	25,642	1,689	23,953	28	127	682	842	4,280	13,922	1,871
Estimated total	100.0%	28,177	1,711	26,466	28	128	689	856	4,308	13,332	2,108
Rate per 100,000 inhabitants		6,391.3	417.8	5,973.7	3.3	31.3	168.2	209.0	1,468.3	3,248.1	430.3
Tulsa, Okla.	546,200										
(Includes Creek, Mayes, Osage, Rogers, Tulsa and Wagoner Counties.)											
Area actually reporting	91.0%	22,741	1,871	20,870	34	122	455	1,258	7,067	11,379	1,598
Estimated total	100.0%	23,463	1,946	21,309	39	127	466	1,311	6,080	11,752	1,673
Rate per 100,000 inhabitants		4,216.3	344.0	3,872.3	6.9	22.4	82.9	234.7	1,428.3	2,077.6	286.4
Tuscaloosa, Ala.	121,000										
(Includes Tuscaloosa County.)											
Area actually reporting	100.0%	3,180	430	2,751	11	9	131	278	1,142	1,348	220
Rate per 100,000 inhabitants		2,572.1	350.4	2,222.7	9.0	7.4	107.0	227.1	933.7	1,098.5	180.8
Utica-Rome, N.Y.	334,000										
(Includes Herkimer and Oneida Counties.)											
Area actually reporting	97.7%	5,642	143	5,499	11	20	66	56	1,937	3,122	411
Estimated total	100.0%	5,877	150	5,683	11	21	71	53	1,984	3,280	422
Rate per 100,000 inhabitants		1,760.9	38.4	1,721.5	3.3	6.4	21.8	26.2	601.0	993.2	131.2
Vallejo-Fairfield-Napa, Calif.	268,000										
(Includes Napa and Solano Counties.)											
Area actually reporting	100.0%	14,712	921	13,792	17	72	288	548	5,280	7,480	1,124
Rate per 100,000 inhabitants		5,483.4	343.2	5,140.2	6.3	26.8	106.6	203.4	1,921.0	2,288.3	412.9
Vineland-Millville-Bridgeton, N.J.	128,000										
(Includes Cumberland County.)											
Area actually reporting	92.0%	5,164	388	4,828	12	38	144	180	1,608	2,929	388
Estimated total	100.0%	5,812	388	5,147	12	38	148	187	1,611	3,180	438
Rate per 100,000 inhabitants		4,318.8	306.2	4,094.4	9.4	26.1	135.1	136.6	1,267.4	2,425.8	323.1
Waco, Tex.	148,000										
(Includes McLennan County.)											
Area actually reporting	100.0%	7,318	548	6,288	23	46	207	671	2,224	3,732	288
Rate per 100,000 inhabitants		4,924.6	844.6	4,240.0	15.6	31.0	139.8	453.8	1,496.7	2,528.7	200.6

See footnotes at end of table.

National Crime, Rate, and Percent Change

Crime index offenses	Estimated crime 1974		Percent change over 1973		Percent change over 1969		Percent change over 1960	
	Number	Rate per 100,000 inhabitants	Number	Rate	Number	Rate	Number	Rate
Total	10,192,000	4,821.4	+17.6	+16.7	+38.2	+31.8	+235.0	+187.0
Violent	969,820	458.8	+11.3	+10.5	+47.2	+40.3	+228.0	+184.8
Property	9,222,300	4,362.6	+18.3	+17.5	+37.5	+31.0	+199.7	+134.2
Murder	20,600	9.7	+5.5	+4.3	+40.3	+32.9	+127.4	+96.2
Forcible rape	55,210	26.1	+7.8	+7.0	+49.0	+41.3	+222.4	+174.7
Robbery	441,290	208.8	+15.1	+14.3	+48.0	+41.1	+318.2	+268.0
Aggravated assault	452,720	214.2	+8.5	+7.7	+46.6	+39.7	+165.6	+150.6
Burglary	3,039,200	1,429.0	+18.5	+17.6	+53.3	+46.1	+233.2	+182.8
Larceny-theft	5,227,700	2,473.0	+21.0	+20.2	+35.3	+28.9	+183.6	+146.6
Motor vehicle theft	972,800	460.6	+5.2	+4.4	+11.2	+5.9	+197.7	+152.3

only the numerical factor of population and does not incorporate any of the other elements which contribute to the amount of crime in a given area. Tables disclose that the varying crime experiences, especially in large cities and suburban communities, are affected by a complex set of involved factors and are not solely related to numerical population differences.

Crime Rate by Region, 1974

(Rate per 100,000 inhabitants)

Crime index offenses	Northeastern States	North Central States	Southern States	Western States
Total	4,377.5	4,691.6	4,233.7	6,501.1
Violent	435.7	459.3	447.0	507.2
Property	3,941.9	4,232.1	3,806.7	5,993.9
Murder	7.6	8.5	12.3	9.3
Forcible rape	20.7	24.7	26.1	36.3
Robbery	278.4	251.9	186.6	199.4
Aggravated assault	189.1	174.9	229.0	262.2
Burglary	1,264.2	1,287.2	1,240.9	1,823.9
Larceny-theft	1,975.6	2,380.3	2,130.6	3,597.7
Motor vehicle theft	601.2	424.5	335.2	548.7

Crime Rate by Area, 1974

(Rate per 100,000 inhabitants)

Crime index offenses	Area			
	Total U.S.	Metropolitan areas	Rural	Other cities
Total	4,821.4	5,621.6	1,746.5	4,057.2
Violent	458.8	558.4	151.2	280.2
Property	4,362.6	5,063.2	1,595.3	3,777.0
Murder	9.7	10.6	7.8	5.7
Forcible rape	26.1	31.2	11.6	13.4
Robbery	208.8	273.7	20.4	84.2
Aggravated assault	214.2	242.8	111.5	175.0
Burglary	1,429.0	1,692.8	685.2	1,029.9
Larceny-theft	2,473.0	2,820.9	838.1	2,348.5
Motor vehicle theft	460.6	570.4	62.8	320.6

The tables set forth on this page reveal the variations in crime experienced by metropolitan areas, rural areas, and other cities.

The crime rates set forth in the National Crime Rate and Percent Change table for each of the Crime Index offenses show a variation from a 20 percent increase in larceny-theft to a 4 percent increase in murder. The number of crimes per unit of population is highest in the large metropolitan centers.

The accompanying charts illustrate the trend of crime in the United States from 1969 through 1974 by showing percent changes in volume and crime rate together with the population increase. Separate charts provide similar information relative to crimes of violence and crimes against property. Since 1969, the violent crime rate has increased 40 percent and the property crime rate increased 31 percent. The violent crime group includes murder, forcible rape, robbery, and aggravated assault offenses. The property crime category is made up of burglary, larceny-theft, and motor vehicle theft offenses.

MURDER AND NONNEGLIGENT MANSLAUGHTER

This Crime Index offense is defined in Uniform Crime Reporting as the willful killing of another. The classification in this offense, as in all of the other Crime Index offenses, is based solely on police investigation as opposed to the determination of a court, medical examiner, coroner, jury, or other judicial body.

Deaths caused by negligence, suicide, accident, or justifiable homicide are not included in the count for this offense classification. Attempts to murder or assaults to murder are scored as aggravated assaults and not as murder.

Table 5.—Index of Crime, 1974, Statistical Metropolitan Statistical Areas—Continued

Standard Metropolitan Statistical Area	Population	Total Crime Index	Violent crime	Property crime	Murder and non-negligent man-slaughter	Forcible rape	Robbery	Aggravated assault	Burglary	Larceny-theft	Motor vehicle theft
Toledo, Ohio-Mich.	[illegible]										
(Includes Fulton, Lucas, Ottawa and Wood Counties, Ohio and Monroe County, Mich.)											
Area actually reporting	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Estimated total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Rate per 100,000 inhabitants		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Topeka, Kans.	[illegible]										
(Includes Jefferson, Osage and Shawnee Counties.)											
Area actually reporting	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Rate per 100,000 inhabitants		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Trenton, N.J.	[illegible]										
(Includes Mercer County.)											
Area actually reporting	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Rate per 100,000 inhabitants		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Tucson, Ariz.	[illegible]										
(Includes Pima County.)											
Area actually reporting	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Rate per 100,000 inhabitants		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Tulsa, Okla.	[illegible]										
(Includes Creek, Mayes, Osage, Rogers, Tulsa and Wagoner Counties.)											
Area actually reporting	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Estimated total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Rate per 100,000 inhabitants		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Tuscaloosa, Ala.	[illegible]										
(Includes Tuscaloosa County.)											
Area actually reporting	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Rate per 100,000 inhabitants		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Utica-Rome, N.Y.	[illegible]										
(Includes Herkimer and Oneida Counties.)											
Area actually reporting	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Estimated total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Rate per 100,000 inhabitants		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Vallejo-Fairfield-Napa, Calif.	[illegible]										
(Includes Napa and Solano Counties.)											
Area actually reporting	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Rate per 100,000 inhabitants		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Vineland-Millville-Bridgeton, N.J.	[illegible]										
(Includes Cumberland County.)											
Area actually reporting	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Rate per 100,000 inhabitants		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Waco, Tex.	[illegible]										
(Includes McLennan County.)											
Area actually reporting	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Estimated total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Rate per 100,000 inhabitants		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Washington, D.C.-Md.-Va.	[illegible]										
(Includes District of Columbia, Charles, Montgomery and Prince Georges Counties, Md., Alexandria, Fairfax and Falls Church Cities and Arlington, Fairfax, Loudoun and Prince William Counties, Va.)											
Area actually reporting	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Estimated total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Rate per 100,000 inhabitants		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Waterloo-Cedar Falls, Iowa	[illegible]										
(Includes Black Hawk County.)											
Area actually reporting	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Rate per 100,000 inhabitants		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
West Palm Beach-Boca Raton, Fla.	[illegible]										
(Includes Palm Beach County.)											
Area actually reporting	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Rate per 100,000 inhabitants		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

See footnotes at end of table.

National Crime, Rate, and Percent Change

Crime index offenses	Estimated crime 1975		Percent change over 1974		Percent change over 1970		Percent change over 1960	
	Number	Rate per 100,000 inhabitants	Number	Rate	Number	Rate	Number	Rate
Total	11,256,600	5,281.7	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Violent	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Property	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Murder	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Forcible rape	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Robbery	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Aggravated assault	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Burglary	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Larceny-theft	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Motor vehicle theft	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Regionally, in 1975, the Northeastern States reported an 11 percent increase in crime, the North Central States a 9 percent increase, the Southern States a 12 percent increase, and the Western States an increase of 7 percent.

Crime rates relate the incidence of reported crime to population. A crime rate may be viewed as a victim risk rate. Crime rates used are based on Crime Index offenses.

The Crime Index rate of the United States in 1975 was 5,282 per 100,000 inhabitants. This was a 9 percent increase from the crime rate of 4,850 per 100,000 inhabitants in 1974. The national crime rate, or the risk of being a victim of one of these crimes, has increased 33 percent since 1970. Many factors influence the nature and extent of crime in a particular community. A number of these factors are shown on page v of this publication. A crime rate takes into consideration only the numerical factor of population and does not incorporate any of the other elements which contribute to the amount of crime in a given area. Tables disclose that the varying crime experiences, especially in large cities and suburban communities, are affected by a complex set of involved factors and are not solely related to numerical population differences.

The tables set forth here reveal the variations in crime experienced by metropolitan areas, rural areas, and other cities.

The crime rates set forth in the National Crime Rate and Percent Change table for each of the Crime Index offenses show a variation from a 13 percent increase in larceny-theft to a 2 percent decrease in murder. The number of crimes per unit of population is highest in the large metropolitan centers.

Crime Rate by Region, 1975

[Rate per 100,000 inhabitants]

Crime index offenses	Northeastern States	North Central States	Southern States	Western States
Total	[illegible]	[illegible]	[illegible]	[illegible]
Violent	[illegible]	[illegible]	[illegible]	[illegible]
Property	[illegible]	[illegible]	[illegible]	[illegible]
Murder	[illegible]	[illegible]	[illegible]	[illegible]
Forcible rape	[illegible]	[illegible]	[illegible]	[illegible]
Robbery	[illegible]	[illegible]	[illegible]	[illegible]
Aggravated assault	[illegible]	[illegible]	[illegible]	[illegible]
Burglary	[illegible]	[illegible]	[illegible]	[illegible]
Larceny-theft	[illegible]	[illegible]	[illegible]	[illegible]
Motor vehicle theft	[illegible]	[illegible]	[illegible]	[illegible]

Crime Rate by Area, 1975

[Rate per 100,000 inhabitants]

Crime index offenses	Total U.S.	Metropolitan areas	Rural	Other cities
Total	5,281.7	[illegible]	[illegible]	[illegible]
Violent	[illegible]	[illegible]	[illegible]	[illegible]
Property	[illegible]	[illegible]	[illegible]	[illegible]
Murder	[illegible]	[illegible]	[illegible]	[illegible]
Forcible rape	[illegible]	[illegible]	[illegible]	[illegible]
Robbery	[illegible]	[illegible]	[illegible]	[illegible]
Aggravated assault	[illegible]	[illegible]	[illegible]	[illegible]
Burglary	[illegible]	[illegible]	[illegible]	[illegible]
Larceny-theft	[illegible]	[illegible]	[illegible]	[illegible]
Motor vehicle theft	[illegible]	[illegible]	[illegible]	[illegible]

The accompanying charts illustrate the trend of crime in the United States from 1970 through 1975 by showing percent changes in volume and crime rate together with the population increase. Separate charts provide similar information relative to crimes of violence and crimes against property. Since 1970, the violent crime rate has

Table 5.—Index of Crime, 1975, Standard Metropolitan Statistical Areas—Continued

Standard Metropolitan Statistical Area	Population	Total Crime Index	Violent crime	Property crime	Murder and non-negligent man-slaughter	Forcible rape	Robbery	Aggravated assault	Burglary	Larceny-theft	Motor vehicle theft
Springfield, Ill.	177,680										
(Includes Menard and Sangamon Counties.)											
Area actually reporting	100.0%	9,376	394	9,182	6	29	215	144	3,323	5,189	671
Rate per 100,000 inhabitants		5,291.9	221.8	5,170.0	3.4	16.3	121.1	81.1	1,870.4	2,921.7	377.8
Springfield, Mo.	186,232										
(Includes Christian and Greene Counties.)											
Area actually reporting	100.0%	11,274	418	10,856	7	19	130	262	2,878	7,641	338
Rate per 100,000 inhabitants		6,053.5	224.4	5,829.0	3.8	10.2	70.1	140.8	1,553.7	4,102.4	181.9
Springfield-Chicopee-Holyoke, Mass.	585,377										
(Includes Hampden and Hampshire Counties.)											
Area actually reporting	88.0%	30,721	2,220	28,501	8	68	741	1,544	9,052	12,613	6,797
Estimated total	100.0%	31,240	2,386	28,903	8	67	731	1,580	10,144	12,661	6,099
Rate per 100,000 inhabitants		5,336.2	425.6	4,877.5	1.4	11.3	126.7	268.3	1,711.6	2,229.1	936.8
Stockton, Calif.	365,000										
(Includes San Joaquin County.)											
Area actually reporting	100.0%	23,989	1,814	22,229	24	68	788	919	6,620	14,234	1,271
Rate per 100,000 inhabitants		8,252.9	566.6	7,684.3	11.2	20.7	233.4	262.3	2,256.6	4,720.2	430.4
Syracuse, N.Y.	646,412										
(Includes Madison, Onondaga, and Oswego Counties.)											
Area actually reporting	76.8%	28,798	1,584	27,182	15	60	688	822	8,040	16,984	1,349
Estimated total	100.0%	28,815	1,588	27,229	15	70	690	813	8,081	17,015	1,333
Rate per 100,000 inhabitants		4,443.9	244.6	4,198.3	2.3	15.2	101.6	125.4	1,235.7	2,624.1	205.6
Tacoma, Wash.	419,222										
(Includes Pierce County.)											
Area actually reporting	100.0%	24,180	2,003	22,177	24	239	627	1,103	7,080	12,677	1,430
Rate per 100,000 inhabitants		5,768.3	477.7	5,290.6	5.1	57.0	149.6	263.0	1,902.0	3,022.1	362.5
Tallahassee, Fla.	129,894										
(Includes Leon and Wakulla Counties.)											
Area actually reporting	100.0%	10,284	625	10,159	18	59	245	331	3,099	6,320	441
Rate per 100,000 inhabitants		7,915.9	489.7	7,226.2	13.6	43.9	173.1	268.1	2,185.8	4,698.5	342.6
Tampa-St. Petersburg, Fla.	1,231,129										
(Includes Hillsborough, Pasco, and Pinellas Counties.)											
Area actually reporting	99.7%	102,091	9,047	94,015	123	498	3,275	5,121	32,238	58,722	3,025
Estimated total	100.0%	103,428	9,070	94,358	123	498	3,288	5,133	32,262	58,361	3,044
Rate per 100,000 inhabitants		7,488.3	584.7	6,881.7	11.1	36.1	237.7	371.8	2,418.5	4,236.9	264.2
Terre Haute, Ind.	178,643										
(Includes Clay, Sullivan, Vermillion, and Vigo Counties.)											
Area actually reporting	93.2%	5,752	202	5,548	12	11	107	73	2,202	3,070	477
Estimated total	100.0%	5,741	234	5,487	14	16	125	90	2,221	3,636	581
Rate per 100,000 inhabitants		3,237.9	144.6	3,093.3	8.0	9.1	72.9	54.7	1,231.[illegible]	2,051.5	316.4
Toledo, Ohio-Mich.	783,187										
(Includes Fulton, Lucas, Ottawa, and Wood Counties, Ohio and Monroe County, Mich.)											
Area actually reporting	96.0%	47,597	3,156	44,451	60	248	1,799	1,081	11,7[illegible]	30,331	2,310
Estimated total	100.0%	48,916	3,226	45,306	61	250	1,810	1,087	12,098	30,865	2,387
Rate per 100,000 inhabitants		6,191.8	409.4	5,782.2	7.8	31.9	221.6	138.7	1,520.9	3,941.4	305.1
Topeka, Kans.	196,000										
(Includes Jefferson, Osage, and Shawnee Counties.)											
Area actually reporting	100.0%	10,703	789	9,943	12	58	195	486	2,748	6,624	381
Rate per 100,000 inhabitants		5,472.9	386.2	5,085.7	6.1	22.8	99.7	248.4	1,397.9	3,388.3	194.6
Trenton, N.J.	316,810										
(Includes Mercer County.)											
Area actually reporting	100.0%	16,277	1,269	14,737	18	77	668	506	3,881	9,131	1,773
Rate per 100,000 inhabitants		5,219.0	403.6	4,715.4	6.0	24.4	308.2	160.7	1,065.2	2,865.3	562.0
Tucson, Ariz.	446,591										
(Includes Pima County.)											
Area actually reporting	100.0%	41,417	2,671	38,746	36	196	890	1,547	12,730	22,481	2,584
Rate per 100,000 inhabitants		9,274.7	594.9	8,628.8	8.0	44.1	199.2	344.6	2,851.4	5,038.2	585.1

See footnote at end of table.

Please notify the court at once if you conclude that other physical arrangements are necessary for the proper conduct of the examination, or if additional expert assistance is necessary for an adequate determination of any of the above matters.

Date

Superior Court Judge

Form XVI. Omnibus hearing form

[CAPTION]

OMNIBUS HEARING FORM

The state of Arizona and the defendants in this action, by their attorneys, if any, hereby certify that they have conferred concerning the issues involved in this matter and report to the court as follows:

☐ That the parties are prepared for the omnibus hearing set for _____ and have indicated herein the matters which they will raise.

☐ That the parties have reached an agreement as to the disposition of this case, which will be submitted to the court for its approval on the date set for the omnibus hearing.

☐ That the parties conclude, after conferring, that no motions specified herein will be urged in this case, and therefore, request the court to vacate the omnibus hearing set for _____ both parties recognizing in so doing that they are hereafter precluded from raising any matter specified herein, except as provided in Rule 16.1(b).

☐ That the parties request the court to set the following matter for evidentiary hearing at the omnibus hearing, for reasons set forth in Attachment ____:

☐ That a request for change of judge is made herein.

☐ Other. See Attachment ____

All parties hereby certify that they have reviewed the entire omnibus hearing form and know of no motion or issue specified in the form which they desire to raise at any time during this case other than those noted. Counsel for the defendant hereby certifies that he knows of no problems concerning the securing of evidence, including statements or confessions of the defendant, identifications of the defendant, and results of a search and seizure, electronic surveillance, or arrest, or any other constitutional issues raisable by any of the

(Pages 737-739 omitted)

APPENDIX V

☐ ☐ 12. To suppress evidence based on unlawfulness of an arrest.

☐ ☐ 13. To suppress evidence based on unlawfulness of a search or seizure.

☐ ☐ 14. To suppress evidence based on unlawfulness of an identification.

☐ ☐ 15. To determine the admissibility of evidence (motion in limine), to wit: _____

_____

☐ ☐ 16. To modify the conditions of release.

☐ ☐ 17. To request subpoena of an out-of-state witness.

☐ ☐ 18. To require a material witness to enter into an undertaking under Ariz.Rev.Stat.Ann. §§ 13–1841 and –1842.

☐ ☐ 19. Other, specified on Attachment _____

III. STIPULATIONS

The parties agree to be bound, for purposes of this proceeding only, to the following facts:

☐ That the defendant was convicted of the following offenses, which shall be considered prior convictions without production of a certified copy or witnesses to the conviction:

Offense_____	Offense_____	Offense_____
_____	_____	_____
Place_____	Place_____	Place_____
_____	_____	_____
Date_____	Date_____	Date_____
_____	_____	_____

☐ That if _____ were called and sworn as a witness he or she should testify that he or she was the owner of the motor vehicle, on the date, referred to in the indictment or information and that on or about that date the motor vehicle (disappeared or was stolen) (was opened or broken into) (was tampered with) and that he or she never gave the defendant or any other person permission to take, enter, or tamper with the motor vehicle.

☐ That the substance referred to in the indictment or information is _____ and its weight is _____

☐ That there has been a continuous chain of custody in government agents from _____ to _____ of the following: _____

_____

_____

Form XV –2. Notice of appointment of mental health expert

[CAPTION]

NOTICE OF APPOINTMENT

TO: _____

YOU ARE HEREBY APPOINTED TO serve as a mental health expert in this case on behalf of _____ to examine the mental condition of _____ who is charged with the crime of _____ and can be reached at _____

_____

and thereafter to prepare and send to the clerk of the court a written report of your findings and hold yourself available to testify in court concerning them.

Your report to this court is to include the following items:

(1) The probable mental condition of the defendant at the time he committed the offense; and

(2) If you determine that he probably suffered from a mental disease or defect at that time, the relation of such disease or defect to the alleged offense.

Please notify the court at once if you conclude that other physical arrangements are necessary for the proper conduct of the examination, or if additional expert assistance is necessary for an adequate determination of any of the above matters.

_____ _____

Date Superior Court Judge

Amended, effective Aug. 1, 1975.

Form XVI. Omnibus hearing form

[CAPTION]

OMNIBUS HEARING FORM

The state of Arizona and the defendants in this action, by their attorneys, if any, hereby certify that they have conferred concerning the issues involved in this matter and report to the court as follows:

☐ That the parties are prepared for the omnibus hearing set for _____ and have indicated herein the matters which they will raise.

☐ That the parties have reached an agreement as to the disposition of this case, which will be submitted to the court for its approval on the date set for the omnibus hearing.

☐ That the parties conclude, after conferring, that no motions specified herein will be urged in this case, and therefore, request the court to vacate the omnibus hearing set for _____; both parties recognize in so doing that they are hereafter precluded from raising any matter specified herein, except as provided in Rule 16.

☐ That the parties request the court to set the following matter for evidentiary hearing at the omnibus hearing, for reasons set forth in Attachment _____

_____

(Pages 240–41 omitted.)

II. ISSUES WHICH WILL BE RAISED IN THE CASE

The parties hereby notify the court and each other of their intention to raise the following issues in this case: [Check motions which will be made in box of party which will make the motion; if uncontested, check both boxes.]

State	Defendant		
☐	☐	1.	To challenge the jurisdiction of the court.
☐	☐	2.	To dismiss an information or indictment under Rule 16.7 on the grounds that: _____
☐	☐	3.	To review the determination of probable cause under Rule 5.5/Rule 12.9.
☐	☐	4.	To disqualify a judge under Rule 10.1/Rule 10.2.
☐	☐	5.	To change the place of trial under Rule 10.3.
☐	☐	6.	To withdraw as counsel under Rule 6.3.
☐	☐	7.	To request a determination of defendant's competency/sanity, under Rule 11. _____
☐	☐	8.	To request a determination of defendant's sanity under Rule 11. _____
☐	☐	9.	To amend an information or indictment under Rule 13.5.
☐	☐	10.	To sever defendants or counts under Rule 13.4.
☐	☐	11.	To consolidate defendants or counts under Rule 13.3(c).
☐	☐	12.	To determine the voluntariness of a statement made by the defendant, to wit: _____
☐	■	13.	To suppress evidence based on unlawfulness of an arrest.
☐	■	14.	To suppress evidence based on unlawfulness of a search or seizure. _____
☐	☐	15.	To suppress evidence based on unlawfulness of an identification.
☐	☐	16.	To determine the admissibility of evidence (motion in limine), to wit: _____
☐	☐	17.	To modify the conditions to release.
☐	☐	18.	To request subpoena of an out-of-state witness.
☐	☐	19.	To require a material witness to enter into an undertaking under Ariz.Rev.Stat.Ann. §§ 13-1841 and -1842.
☐	☐	20.	Other, specified on Attachment _____